

**INTERNATIONAL
ECONOMIC POLICIES**

INTERNATIONAL ECONOMIC POLICIES

A SURVEY OF THE ECONOMICS OF DIPLOMACY

BY

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AUTHOR OF

'COMMERCIAL POLICY IN WAR TIME AND AFTER'



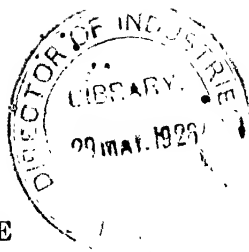
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TO
MR. AND MRS. WILLIAM ALLEN WHITE



PREFACE

This book discusses the major economic factors in international relations. It would be one-sided to suggest that the rivalries and clashes of nations are entirely the result of economic differences, but it would be equally erroneous to contend that such matters as competition for markets, for supplies of raw materials, for loans, and for concessions are not major causes of diplomatic controversies and international misunderstandings. No effort is here made to maintain a sharp distinction between the economic and the political. The political in fact, in its true meaning, embraces the economic. But the old diplomacy not infrequently sought to escape from the consequence of its failures by emphasizing personal and political distinctions, passing over the issues of international commerce and finance as being beneath its dignity. While personal amenities and etiquette will always have their place, it may safely be asserted that success in diplomacy will, in future, depend more and more upon a grasp of the political significance of economic facts and tendencies. In the application of practical world politics the difference between the South Manchurian Railway Company and the Japanese Government, between the Anglo-Persian Oil Company and the British Government, or, before 1914, between the German Anatolian Railway Company and the German Government, amounts to the difference between Tweedledum and Tweedledee, as would probably be conceded by even the most politically minded diplomat. It may even be said that the great run of less obvious cases which absorb the thought and determine the action of

foreign offices are economic or but once removed from the economic.

Following the introductory chapter the book takes up factors affecting the direct commercial relations and negotiations of states. These include the principles and methods of tariff bargaining and the fundamental but somewhat technical features of commercial treaties, such as "national" and "most-favored-nation" treatment. The discussion of problems within this field, involving national responsibility and possible international complications, leads naturally to a discussion of the preferential arrangements among the commonwealth of nations forming the British Empire.

Five subsequent chapters deal primarily with the issues arising from national rivalry for privilege and control in the economically less advanced parts of the world. In this connection colonial commercial policies are analyzed, and the policy of preference, exclusion, and monopoly is contrasted with the principle of the "open door" or commercial equality. International rivalry for raw materials and energy resources and for the privilege to export capital is discussed as a problem calling for an affirmative national policy and, in some of its aspects, for international coöperation. The final chapters consider national and international problems arising from foreign trade and ocean transportation.

The work seeks throughout to make clear the obligations resting upon nations and upon those directing their foreign interests to devise means for control of the economic forces which shape and determine the fate of nations. Three propositions underlie the whole discussion: (1) The conceptions of political and social control prevailing in Western states to-day are, if not Aristotelian, at least those of the eighteenth century. (2) The material progress of Western civilization has been

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effected at an unprecedented rate and is still rushing forward to new conquests. Living in a new material world, we lack a science of government capable of controlling its destructive tendencies or of turning its achievements to social ends. (3) World society rests on the nation, and the preservation of the nation depends upon the establishment of principles and methods of international coöperation that will effectively solve the vast problems impossible of solution by nations acting singly or bargaining two by two. It is the purpose of this book to indicate, while reviewing the facts of our economic life, the principles that may guide toward a more adequate and intelligent organization of our common international existence.

The busy life of a government official does not lend itself to consecutive research. This volume is the growth of several years. As will be obvious, it does not discuss the domestic tariff problem; nevertheless in a broad sense it is a by-product of my daily work. Some parts are adaptations of my lectures in the School of Foreign Service of Georgetown University, and others of addresses in conferences over which I presided in 1922, 1923, and 1924 at the Institute of Politics at Williamstown, Mass. Through the courtesy of Dr. Clyde L. King, editor of the *Annals*, I have made use of some data from my volume on *Raw Materials and Foodstuffs in the Commercial Policies of Nations*, published by the American Academy of Political and Social Science.

The opinions expressed are personal and are in no sense to be ascribed, because of their publication by me, to the United States Tariff Commission, of which I am a member.

From time to time friends have contributed suggestions utilized in the text and have assisted in shaping the final form of the manuscript. I wish here to acknowledge my indebtedness to them, and especially to Benjamin B. Wal-

PREFACE

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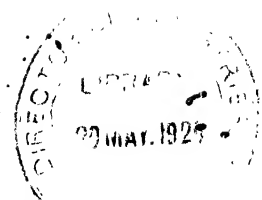
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CHAPTER I

THE BACKGROUND OF THE MODERN WORLD

Far-call'd our navies melt away
On dune and headland sinks the fire—
Lo, all our pomp of yesterday
Is one with Nineveh and Tyre!
Judge of the Nations, spare us yet,
Lest we forget, lest we forget!

—RUDYARD KIPLING

Territorial Conquest of the Non-European World

The age of discovery, exploration, and migration, extending from a time before the voyage of Columbus to the American Revolution, witnessed the renaissance of western civilization and the establishment of the ascendancy of European nations in world affairs. But as the modern state developed, national rivalry for colonial empire and economic advantage became fiercer and fiercer. Throughout the sixteenth, seventeenth, and eighteenth centuries, Portugal and Spain, the Netherlands, France, and England in turn used their political and military strength to advance their commercial interests. They sought not only ports in every sea, but exclusive control of whole coasts.¹ In Africa and Asia, however, their conquests were superficial. Trading posts were established

¹ See Chap. vi, *infra*.

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on the borders of countries in these continents, but life in the interior continued as it had been from time immemorial. In a few exceptional cases only, as, for example, Java, the life of the native peoples was modified, if not altogether changed, by the new contacts. But the footholds gained during these centuries later became the bases from which the successful nations advanced into the interior and from which arose the colonial empires of the present day.

In the Americas, on the other hand, Europeans found vast lands in the Temperate Zone virtually unoccupied, and they transplanted their civilization into the new environment. Settlement colonies then established were to become nations rivaling in power their parent states.

Mercantilism

The state policy which in general determined the acts of statesmen during these three centuries of migration, known as mercantilism, is illustrated by the policy of Frederick the Great in Prussia, Colbert in France, and Cromwell in England. Its adoption, it was held, would unify the nation within and protect it from rivals without. It expressed itself in harsh navigation laws, high tariffs, prohibitions, trade restrictions, and commercial war. Each of the states struggling for supremacy during those centuries employed such means to advance and strengthen its position. Portugal made foreign trading a state monopoly. Spain controlled commerce with her colonies and forced trade to move in definitely restricted channels. The Netherlands carried on the trade struggle through trading companies with monopolistic and almost sovereign rights. The French and the British used navigation laws and the entire category of discriminations and preferences which characterized the commercial policies of the time.

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Gustav Schmöller has thus summarized the principles of mercantilism:²

. . . in its innermost kernel it is nothing but state making—not state making in a narrow sense, but state making and national economy making at the same time; state making in the modern sense, which creates out of the political community an economic community, and so gives it a heightened meaning. The essence of the system lies not in some doctrine of money, or of the balance of trade; not in tariff barriers, protective duties, or navigation laws; but in something far greater, namely, in the total transformation of society and its organization, as well as of the state and its institutions, in the replacing of a local and territorial economic policy by that of the national state.

In the seventeenth and eighteenth centuries the relations, and especially the economic relations, between states were particularly hostile and harsh, because the new economico-political creations were for the first time trying their strength, and because it was the first time that such considerable political forces were available for the pursuit of commercial, agricultural, and industrial ends—forces which might seem, if only properly employed, to promise untold wealth to every state. In all ages history has been wont to treat national power and national wealth as sisters; perhaps they were never so closely associated as then. The temptation to the greater states of that time to use their political power for conflict with their economic competitors, and when they could, for their destruction, was too great for them not to succumb time after time and either to set international law at naught or twist it to their purposes. Commercial competition, even in times nominally of peace, degenerated into a state of undeclared hostility: it plunged nations into one war after another, and gave all wars a turn in the direction of trade, industry, and colonial gain, such as they never had before or after.

Mercantilist views are deeply embedded in the thought of western peoples. They are an expression of group consciousness, encouraged, no doubt, for their own gain by classes within the state. Coöperation through national gov-

² Schmöller, Gustav: *The Mercantile System and Its Historical Significance*, pp. 50, 63.

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• ernments has sometimes been not only an effective weapon in the struggle for existence but an important agency for the advancement of civilization. While mercantilism has undoubtedly expressed itself in objectionable forms, it would be wrong to dismiss it lightly as reflecting merely the views of an unenlightened age. Its adherents, it is true, looked upon world society as a collection of competing nations, continuously engaged in conflict. They believed that the power of one state rises while that of another declines, their respective powers being necessarily relative, and that states therefore must vie with each other for position, advantage, material wealth, and glory. Under the mercantilist system the interest of the individual counted for little as compared with the welfare of the state, and if the two came into conflict, the individual had to yield. The political power of the state was held to be dependent upon industrial and trade supremacy, logically encouraged by state action. The interest of people as producers was regarded as of greater importance than their interest as consumers. Colonies were counted important adjuncts to a nation's economic welfare, and state policies were shaped, and even backed by wars, to win them. There was an element of truth even in the mercantilist balance-of-trade theory which certain free-trade economists have been wont to regard as the essence of mercantilism. The belief was natural in an age when specie was scarce and credit was not highly developed, and when bullion was essential to a nation in the prosecution of its wars. Then, as since, to be in a creditor status gave a nation a prestige in negotiating with others.

Mercantilist policies were directed not only toward the encouragement of manufacturing, the stimulation of export trade, the monopolizing of shipping, and the ruling of colonies, but also toward the increase of population. Man power counted in the contest between states. The Malthu-

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sian fear had not at that time possessed the minds of statesmen, who regarded increasing population at home as an assurance of supremacy over less populous states.

Mercantilist conceptions could not dominate the acts of statesmen for three centuries without deeply affecting the conditions of life and the thoughts of peoples. They may be condemned by some, praised by others, but to those at least who analyze our modern world correctly, it is clear that they operated to subordinate the individual and, by unifying the nation from within, to make it an effective unit against all outside states in the world struggle for wealth and prestige.

The Industrial Revolution

As the eighteenth century drew toward a close, industry and commerce became restive under the restrictions of mercantilist state policies. Up to that time trade and industry had operated on a comparatively small scale. Both the quantity and the variety of products carried in the little wooden ships of the period were extremely limited. They were chiefly luxuries having but little relation to domestic industries as then conducted. Industry itself was largely in the handicraft or domestic stage. According to present standards capital had not accumulated, nor had division of labor been developed. One laborer performed practically all the processes required in making a given article, and, being his own salesman, he received full value for his work. The raw materials he used were those found close at hand, and his methods in handling them were crude as compared with those of a later day. Into this situation came a mental reawakening affecting production. The movement, at first chiefly in England, fully deserves the description "revolution," since it not only changed the organization and methods of industry but shifted social and political control to a new commercial

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- And manufacturing class. It injected into the stream of thought new conceptions which have created the modern world. It effected a striking advance not only in the methods of production but in science and in business organization. It established the basis of the new industrialism, which now prevails in western states and is spreading to Asia.

The Industrial Revolution was characterized by a series of great mechanical inventions. Steam was applied to machinery and, in due time, to transportation. The old spinning wheel began to give place to power spinning, the hand loom to the power loom. The cotton gin was invented. Technical methods handed down from father to son, in their essentials centuries old, gradually gave way before the advancing machine production. The early inventions were but a beginning. As time went on, the complex structure of modern industry was reared, a notable feature being the application of machinery to practically every industry. Scientific discoveries increased the efficiency of industry. Chemistry and physics, biology and geology all contributed to laying the foundation of that complex industrialism which has led to the characterization of our life as a machine civilization.

Laborers no longer worked individually and in their homes, but were gathered into factories where they obtained as wages a share of the income of industry. The control of industry fell into the hands of a capitalist class, and the accumulation of capital in large quantities went hand in hand with the perfection of business organization and the development of production on a large scale. Quantities of standardized products were turned out, so that articles formerly regarded as for the rich became the comforts of the common man. In addition to capital, business organization, and labor, large-scale production demanded power to turn the machinery, cheap transporta-

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tion, and large quantities of inexpensive and frequently bulky raw materials which had to be transported long distances. Coal thus became the very basis of industrial development, and it was by no means the least factor in England's rapid rise to industrial power.

Individualism as a Protest

The new commercial and manufacturing classes which had become powerful as a result of the new industrial and commercial development found the interference of the state under the influence of mercantilist ideas exceedingly burdensome. Their economic aims, therefore, were furthered by the general movement toward freedom and individual rights in the countries of the Occident, where the spirit of revolt was abroad. Traditions and customs regulating action were questioned; state interference with industry and trade was resented; the right of contract and unrestricted competition was asserted; the individual, in short, claimed the "divine right" to regulate his own affairs. In a word, protests arose against an authority which had lost not only its sacredness but its usefulness as well. Protestantism, once confined to religion, was transferred to the political, legal, and economic field.

The dominant creed of the new movement was the freedom of the individual. It was believed that that society prospered best whose individual members were given freedom to exercise their initiative and right of contract and in which governmental interference in the affairs of the individual was reduced to a minimum. The new belief was summed up in the phrase *laissez faire*.

In politics individualism was associated with the idea of "natural rights" which found its chief expressions in the American Declaration of Independence and in the French Declaration of the Rights of Man. Against the authority and the "divine right" of kings were set the

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"inherent" or "inalienable" rights of every man, among these being "the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."³

In law and legislation, Jeremy Bentham was the great advocate of the removal of restraints from the individual. He rejected the theory of innate rights expounded by French writers and proposed the objective test for legislation, *viz.*, the promotion of the greatest happiness of the greatest number.

Every person (Dicey says⁴ in stating the Benthamite rule) is in the main and as a general rule the best judge of his own happiness. Hence legislation should aim at the removal of all those restrictions on the free action of an individual which are not necessary for securing the like freedom on the part of his neighbors.

This dogma of *laissez faire* (Dicey continues) is not from a logical point of view an essential article of the utilitarian creed. . . . But, though *laissez faire* is not an essential part of utilitarianism it was practically the most vital part of Bentham's legislative doctrine, and in England gave to the movement for the reform of the law, both its power and its character. At the time when Bentham became the preacher of legislative utilitarianism the English people were proud of their freedom, and it was the fashion to assert, that under the English constitution no restraint was placed on individual liberty which was not requisite for the maintenance of public order. Bentham saw through this cant, and perceived the undeniable truth, that, under a system of ancient customs modified by haphazard legislation, unnumbered restraints were placed on the action of individuals, and restraints which were in no sense necessary for the safety and good order of

³ From the "Virginia Bill of Rights," June 12, 1776, quoted from West, Willis M., *A Source Book in American History to 1787*, p. 446.

⁴ Dicey, A. V., *Lectures on the Relation between Law and Public Opinion in England During the Nineteenth Century*, London, 1905, pp. 145, 146 and 175. See also Stephen, Leslie, *The English Utilitarians*, and Mill, J. S., *On Liberty*.

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the community at large, and he inferred at once that these restraints were evils.

The strength of Benthamism lay then far less in its originality than in its being the response to the needs of a particular era, and in its harmony with the general tendencies of English thought. This consideration does not detract from the merit of Bentham and his disciples. That in 1830 the demand for reform should arise was a necessity, but a demand does not of itself create the means for its satisfaction. Had not Benthamism provided reformers with an ideal and a programme, it is more than possible that the effort to amend the law of England might, like many other endeavours to promote the progress of mankind, have missed its mark.

In industry and in international trade the leading spokesman of the new movement was Adam Smith. His break with mercantilism was as sharp as was Bentham's with the legal philosophy of Blackstone. If every man, he held, be permitted to seek his own interest freely, the good of society will be served by a harmony anticipated as a result of competition. The wealth of nations, particularly that of England, he argued, would be advanced by a state policy viewing society as primarily made up, not of competing nations, but of competing individuals. His position on this matter he stated thus:⁶

Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer. The maxim is so perfectly self-evident, that it would be absurd to attempt to prove it. But in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production, and not consumption, as the ultimate end and object of all industry and commerce.

⁶ Smith, Adam, *The Wealth of Nations*, New York, 1904, Vol. II, pp. 159, 160, 184, 185.

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It cannot be very difficult to determine who have been the contrivers of this whole mercantile system; not the consumers, we may believe, whose interest has been entirely neglected; but the producers, whose interest has been so carefully attended to; and among this latter class our merchants and manufacturers have been by far the principal architects.

It is thus that every system which endeavours, either, by extraordinary encouragements, to draw towards a particular species of industry a greater share of the capital of the society than what would naturally go to it, or, by extraordinary restraints, to force from a particular species of industry some share of the capital which would otherwise be employed in it is in reality subversive of the great purpose which it means to promote. It retards, instead of accelerating, the progress of the society towards real wealth and greatness; and diminishes, instead of increasing, the real value of the annual produce of its land and labor.

All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men. The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient: the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society. According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public institutions, which it can never be for the interest of any

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individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great society.

Throughout the nineteenth century there were writers to champion this view of individual liberty and competition.⁶ Nowhere was it expressed with more charming frankness than in *What Social Classes Owe to Each Other* by William Graham Sumner. He says:

My notion of the State has dwindled with growing experience of life. As an abstraction, the State is to me only All-of-us. In practice—that is, when it exercises will or adopts a line of action—it is only a little group of men chosen in a very haphazard way by the majority of us to perform certain services for all of us (p. 9).

International Free-Trade Movement

The free-trade philosophy served as a convenient means of justifying the national aims of Great Britain during the period of her commercial and manufacturing supremacy. The movement was promoted by sincere idealists, unconscious of any nationalistic aim and inspired only by humanitarian purposes. But it was underwritten by the business interests which, cramped in the home market, were in need of the export trade. Manufacturing had not developed in other countries sufficiently to offer them serious competition. Duties on manufactured articles were unnecessary to protect their market at home and duties on grain and raw materials hindered their expansion overseas. Free trade thus became an issue of practical politics and the resulting agitation culminated in the repeal

⁶ Economists generally who hold free trade views in international commerce have abandoned the individualistic principles in industry, and in other domestic economic relations. They accept, for example, the regulation of hours and conditions of labor.

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of the Corn Laws in 1846. In England, where the land was held by a small aristocracy, this repeal marked a notable stage in the political and social revolution whose first great triumph had been the Reform Act of 1832. In international relations the free-trade movement was, from the standpoint of England, just as much an expression of national policy as was protection in the United States or in Germany. It meant for the time being the triumph of British trade. From 1860, when Great Britain and France entered into the Cobden Treaty, until about 1880 free-trade sentiment not only determined the policy of Great Britain but had a moderating influence on tariffs and commercial restrictions in continental countries. While the free-trade movement gained some headway in the United States, the duties levied during the Civil War for revenue purposes were maintained after its close.⁷ Great Britain had practically no serious competition in the world markets in that era of international good feeling. Cosmopolitanism was in the air.

It was during this period (1849) that Great Britain abandoned her discriminatory navigation laws. The adoption of free trade, in principle and in practice, in Great Britain put an end to preferences hitherto given in her markets to colonial products. She discontinued preferences in her colonies in favor of her own goods and even guaranteed by treaty the "open door"⁸ in her possessions. In different degrees other colonial powers relaxed preferential and monopoly regulations on trade. The lack of interest in colonies became general, contrasting strikingly with the feeling during the preceding and following periods of colonial rivalry. The French Government alone continued active in acquiring colonies, although frontier dif-

⁷ Taussig, F. W., *Tariff History of the United States*, 6th edition, Chap. iii.

⁸ Page 50, *infra*.

facilities led to some extension of British holdings in Africa and Asia.

Economic Conquest of the Non-European World

The same forces of expanding industry and trade which played a part in creating the free-trade movement were destined to check it. Bismarck in 1882 made these trenchant comments:⁹

I believe the whole theory of free trade to be wrong. . . . England abolished protection after she had benefited by it to the fullest extent. That country used to have the strongest protective tariffs until it had become so powerful under their protection that it could step out of those barriers like a gigantic athlete and challenge the world. Free trade is the weapon of the strongest nation, and England has become the strongest nation owing to her capital, her iron, her coal, and her harbours, and owing to her favourable geographical position. Nevertheless, she protected herself against foreign competition with exorbitant protective tariffs until her industries became so powerful.

Nations other than Great Britain, developing a modern industrial system, not only turned to protective duties as a means of securing for their own industries an advantage in their home market, but adopted other mercantilist policies in order to extend their external markets and to secure supplies of raw materials. Interest in colonies revived. Beginning in the seventies, Leopold, King of the Belgians, launched his venture in the Congo, Great Britain and France greatly extended their colonial holdings, and Germany, Italy, Japan, and the United States took to themselves colonial domains. Synchronizing with this renewed activity in colonial competition and, indeed, partly a cause of it, came a revival of national consciousness, which manifested itself in the unification of Germany and Italy and in the disintegration of Turkey.

⁹ Quoted in Holland, Bernard, *The Fall of Protection, 1840-1880*, 1913, p. 177.

c. About this time, also, a further improvement in the technique of Western civilization was effected. In what may well be called a second phase of the industrial revolution, the previously noted application of steam to transportation was developed until the operation of a vast network of railroads and steamship lines changed the entire character of land and marine transit. The carrying capacity of both railroads and ships was so increased that bulky foodstuffs and raw materials could be cheaply transported from distant regions and the products of Europe's expanding industrial life carried to the farthest markets. Closely connected with this phase of the industrial revolution was the perfecting of new means of communication. The establishment of the postal service, the invention of the telegraph, cable, and more recently, the practical application of the radio, virtually annihilating time and space, have knit the world together in one great economic unit.¹⁰

The nature of the economic conquest of the non-European world may perhaps be made clearer by considering the African, Oceanic, and Oriental territories available for potential seizure in two classes: (1) territories of weak but recognized states, and (2) territories which, under the rule of small tribal chiefs, were regarded by European diplomats as "unoccupied." The former consisted of a tier of countries across northern Africa and southern Asia, including Abyssinia and the Moslem Sultanates of Zanzibar and Borneo. The latter, covering the rest of tropical Africa and Asia, with the exception of already established colonies, such as Portuguese Mozambique and Angola and French and British ports in West Africa, were regarded as the possession of the first state which established effective occupation. Native tribes, savage or barbarous, were looked upon as having few if any rights, and were often

¹⁰ See Appendix VIII.

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persuaded into signing treaties of whose ultimate purpose they were but little aware. In such areas "protectorates" or colonies were gradually established until, by the end of the nineties, nearly all such territory available in the world was occupied by European states. The bases of colonial claims were exploration, mission stations, trading stations, land concessions, and treaties with native chiefs. The scramble for territory in Africa and Oceania was, in fact, largely due to trade rivalry. Investments already made or in prospect, and which were later to play so important a part in international politics, were relatively of little importance in this early period.

The political significance of colonial expansion during this era is illustrated by France's ambitious project to control the north of Africa. In its scope the plan was not unlike that by which, in the eighteenth century, she had sought to control the chain of waterways including the St. Lawrence River, the Great Lakes, and the Mississippi River. French explorers and travelers, penetrating the Sahara as far as Lake Chad, continued eastward to the headwaters of the Nile with the purpose of securing a solid block of French territory from Algeria to the Red Sea. But this scheme was foiled by Kitchener, who, having subdued the Dervish tribesmen of the Sudan, encountered the French general, Marchand, at Fashoda. "The Fashoda affair" for a time threatened the peace between France and England. England, however, held firmly to her claims to the Egyptian Sudan, and agreements entered into in 1899 and 1904 granted France concessions around Lake Chad and gave her a free hand in Morocco. The agreement of 1904 was the origin of the Entente Cordiale.

As the economic life of the western industrialized nations continued to expand, capital accumulated and began to seek investment overseas. Concessions were obtained for the exploitation of minerals and for the develop-

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ment of plantations; large sums of money were loaned to weak governments in Asia and northern Africa; and through its financial organization, Europe began to penetrate into the very life and civilization of the Asiatic and African peoples. This phase of the economic conquest of the non-European world, following upon and supplementing the trade rivalry just preceding it, had more far-reaching consequences than the conquests which followed the discoveries of the fifteenth and sixteenth centuries. European nations, barred from Latin America by the Monroe Doctrine, had turned their attention to Africa, Oceania, and Asia. Africa had been partitioned, and in Asia areas had been staked out within which the respective western nations were to have a first lien on commercial privileges. These "spheres of influence" were to become protectorates and colonies as the Asiatic governments continued to crumble before western "civilizing" methods.

Degrees of Dependency in the Modern World

The impact of the trade and financial expansion of western nations on the weak states of Latin America was greatly minimized by the Monroe Doctrine. While the United States, as a nation, was not interested in overseas activities at the inception of the land-grabbing policy of European nations, she was none the less unwilling to see political encroachments in the Americas. Trade and finance did effect some conquests in Latin America, but the political consequences which had followed similar advances in other parts of the world were averted by the attitude of the United States. On the other hand, the political dependence of countries inhabited by the non-white races was deeply affected. Peoples of ancient civilization, as well as savage and barbarous tribes, came to feel, in varying degree, dependence on European powers.

An observer of practical world politics soon learns that, varying degrees of dependency exist among the political units of the earth. From semisovereign nations down to the colony with no voice in governing its affairs the gradation is almost imperceptible. Even the sovereignty of independent nations is frequently limited by the great powers, as in the case of Cuba, whose foreign relations are restricted by the Platt Amendment. Our treaties with the Dominican Republic and Haiti place those countries (for the time being) almost in the position of protectorates. China is not entirely sovereign even within her own borders.

A sphere of influence may be defined as an area over which an inchoate control is exercised by a great power, such area being, from the western point of view, less advanced in civilization. This control implies a first lien or option of the dominant power over such territory and is a notice to other foreign powers to stay off. The rights claimed by the controlling power are preemption on concessions for developing natural resources, financing railroads, and promoting other economic enterprises. An attempt to establish spheres of influence in Turkey was involved in the Tripartite Agreement¹¹ between the British Empire, France, and Italy with respect to Anatolia. This agreement, now defunct, recites that the parties desire "to help Turkey, to develop her resources, and to avoid the international rivalries which have obstructed these objects in the past." It defines the boundaries of two areas, one in which "the special interests of France are recognized" and the other in which "the special interests of Italy are recognized."

¹¹ Signed at Sèvres on the same date as the Treaty of Sèvres. De Martens, G. I., *Nouveau Recueil Général*, Third Series, Vol. 12, 3rd sec., p. 785 *et seq.*

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• Article II of this treaty reads as follows:

In accordance with provisions of the Treaty of Peace with Turkey, the nationals of the Contracting Powers, their ships and aircraft, and products and manufactured articles coming from or going to the territories, Dominions, Colonies or Protectorates of the said Powers, shall enjoy in the said areas perfect equality in all matters relating to commerce and navigation, and particularly as regards transit, customs and similar matters.

Nevertheless, the Contracting Powers undertake not to apply, nor to make or support applications on behalf of their nationals, for industrial or commercial concessions in an area in which the special interests of one of the said Powers are recognized, except in cases where such Power declines or is unable to take advantage of its special position.

Protected dependent states are found particularly in Asia, the native states of India and the Federated Malay States being well-known examples. These retain their native rulers and have a considerable degree of independence in local affairs. Their rulers are, however, each "advised" by a representative of the protecting country, who sees that they accept his advice not in any way contrary to the interests of his country. The status of these dependencies is fixed by treaties. Somewhat similar, but not to be confused therewith, are colonial protectorates such as Bechuanaland and other territories in Africa, where the term "protectorate" has little significance, the distinction between a protectorate and a colony being largely technical. Colonies grade all the way from those of complete dependence, with their government entirely in the hands of the mother country (exemplified by some British Crown colonies) to those which have merged into self-governing states, *e.g.*, the Dominions of the British Empire.

A more refined method of exercising political control

over less-advanced sections of the world is that of the mandate system which owes its birth to the Treaty of Versailles. It is perhaps too soon to prophesy whether this device will prove a means whereby backward peoples may develop their own resources and work out their own destiny with a minimum of foreign supervision or whether it will become a cloak for further imperialistic aggression against them.

Foreign Commerce and Governments as Allies

The relation between highly industrialized states of the West and other countries which have not developed for themselves the means of exploiting their material resources involve political, social, and racial issues beyond the scope of this book, but the economic problems arising from the relationship are of sufficient importance to command attention. In spite of efforts to introduce liberal principles into the colonial politics of nations, colonies are still regarded to a large extent as "instruments of commercial policy." They provide markets for home industries, furnish raw materials, afford opportunity for the investment of capital, and furnish employment to a large number of nationals of the country controlling them. Even if open preferences are not given to the products and citizens of the nation which holds the political control of a colony, general conditions tend to throw the greater part of its trade into the hands of the nationals of that country. The traditions and interests of the settlers in a colony are those of the motherland. They naturally look homeward for supplies and demand goods similar to the familiar home products. Governments tend to encourage transportation and communication between the home country and its colonies by means of shipping subsidies, cables, and lower postage rates. Business concerns at home establish

- branch agencies in the colonies and thereby build up a sentiment in favor of commerce with the homeland. The financiers of the home country look to the colonies for an opportunity to invest their surplus capital, undertaking the construction of railroads, the improvement of port facilities, the exploitation of natural resources. They feel a greater security in a new country when they are protected by the political influence of their home government, and the home government in turn makes a practice of supporting their business activities and financial interests in the colonies.

The tendency of governments to support the business ventures of their nationals is not confined to colonies. It extends to all countries where local law does not afford a protection deemed to be adequate. The alliance between governments and business in international economic relations has, however, gone much farther than mere protection. The mercantilist view of world society is still held and acted upon. In international competition the manufacturing and commercial classes have added to their belief in individual freedom and to their resentment of governmental interference, the expectation that government will assist, not restrain, their activities. In contrast with economic activities in domestic affairs, in which governments afford some degree of restraint, the power of the state in foreign affairs is thus regarded as rightly contributing to the promotion of the aims of individuals and corporations. To the fierceness of private trade competition has been added national competition, and trade rivalry, instead of being checked, has been intensified and stamped with a national stamp. It may be predicted that this nationalist competitive system, if allowed to continue the course pursued by it in recent decades, will, like Samson in the temple of the Philistines, destroy itself.

Western Material Civilization Has Outrun Social and Governmental Controls

This reference to world economic conditions, which will be frequently illustrated in the course of this volume, is not made in the spirit of destructive criticism. In the disorganized state of world affairs, it is perhaps inevitable that individuals will seek and obtain the protection and even the active aid of their governments. The fault lies not with any nation or with any class, but with the world system in which nations are now involved—a system which emphasizes mercantilist rights and extreme doctrines of sovereignty in fields to which they do not legitimately apply and which consequently leave human conduct in large areas under a state of anarchy. No race has equalled the white race in material prosperity or in the knowledge of the natural sciences and the consequent control over natural resources and forces. And so, this economic superiority, far from being an accident, is the normal result of all those mental and physical attributes which characterize the white race. No evidence exists that any other race is advancing faster in these physical and mental qualities. The position of the white race in the world, therefore, would seem to be permanently assured unless it destroys itself by internecine conflict, much as was done by the Greeks but on a colossal scale.

The criticisms, therefore, which have been and will be made of our civilization are intended merely to aid in further development. Behind the almost unregulated rivalry of nations are great material forces operating in a world without adequate social control. In international, perhaps, even more than in domestic affairs, our social and political organization has not kept pace with our technical and material development. We live at once in a modern world of industry and natural science, and in an

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ancient world of ethical, social and political standards. Civilization, perhaps, may survive a large amount of inequality—viewed from the standpoint of social perfection—but it is doubtful whether it can survive the distorted conception of national sovereignty which has left many relationships between states and their nationals without law to give them social direction. We are suffering to-day from a too rapid advance in science and in commercial and industrial organization without a corresponding advance in social and governmental organization, a fact nowhere more evident than in international relations. Industry and commerce have expanded so that the major nations are all seriously dependent upon imports of raw materials and exports of finished goods; and nations have attempted to conserve their interests by applying national remedies to an international problem.

The social philosophy of the nineteenth century was often critical, but seldom constructive. Man's intellect was directed chiefly to the erection of a marvelous material civilization, efficient beyond the dreams of former centuries. The science of government, however, did not evolve with equal celerity. Individual rights were over-emphasized; the social significance of industry and trade was overlooked or ignored. Uncontrolled economic rivalry, urged on by national governments exercising only a semblance of control, will ultimately resolve itself into a defeat of the larger aims of western civilization. An adequate system of international law and perfected machinery for its administration and interpretation are the roads not only to world peace but to national prosperity and security. Diplomacy, even with that valuable instrument the conference, has not thus far provided the world with an approximation to adequate government. Civilization has had its very existence imperiled by a misuse of its own

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material achievements and with this warning must turn its attention to devising methods of controlling these forces to social ends. In international affairs at least the way to *good* government is to have *more* government.¹²

¹² The word "government" in this general sense, as frequently used in this book, does not imply necessarily the extension of bureaucratic control or of the formal machinery of the state. It includes rather all the methods by which men collectively control, direct, and regulate their common life, and in addition to the political machinery of the state, may include religious, labor, agricultural, and business organizations such as, for example, the International Chamber of Commerce. It does not, however, include such of the great profit-making corporations (numerous as their stockholders may be) as are essentially the instruments by which a very small group of men attempt to dominate a great industry contrary to the general interest and in spite of the general will to control them. See Chap. xiii.

CHAPTER II

COMMERCIAL TREATIES: NATIONAL TREATMENT

Thou shalt not wrong nor oppress a resident alien; for ye were resident aliens in the land of Egypt.

Ye shall have the same law for the resident alien as for the native born: for I am Jehovah your God.

—ANCIENT HEBREW LAW

Early Commercial Treaties

Commercial treaties are contracts between states regulating commerce, navigation, and certain other relations. They have been resorted to by peoples to moderate the harshness of the commercial restrictions and burdens which characterized earlier centuries. Long before the modern era of commercial development began the principle of commercial treaties was recognized. Ahab, after his victory over the Arameans at Aphek, exacted an agreement from Ben-hadad under which the Israelitish traders were permitted to conduct bazaars in "streets" in Damascus, as Ben-hadad's father had done in Samaria.¹ Other examples are the commercial treaties between Rome and Carthage in 509 B. C. and 348 B. C. The complex structure of the modern system of commercial treaties, however, began to take form about 800 years ago, when Genoa, Pisa, and Venice, in keen rivalry one with another, concluded treaties with other states. The earliest English commercial treaty, the text in Latin, was negotiated with Norway in 1217. British treaties with Spain and Sweden, still in

¹ *I Kings* 20: 34.

force, date from the middle of the seventeenth century

Until near the close of the eighteenth century commercial treaties were the exception in negotiations between nations. International treaties dealt chiefly with questions of war and peace. Even well into the nineteenth century negotiation between nations concerned itself with subjects not immediately connected with commerce. The revolutionary changes in transportation and communication, however, brought about in the latter part of the nineteenth century by the development of railways, steamships, and electrical communication, made possible the unprecedented development of a world-wide commerce. The industrially advanced nations expanded beyond their home markets and began to look abroad for new markets and for new sources of raw materials. Commercial rivalry was intensified, and new occasions for the negotiation of commercial treaties arose. It became the increasing concern of nations to obtain guaranties of stability in their commercial relations with other powers.

Scope of Commercial Treaties

An analysis ² of the treaty structure of the world reveals that the scope of international treaties is as wide and diversified as are human activities and interests. Every object of national activity may also be an object of international negotiations and treaties. Rights and privileges, which in civilized countries are protected, and interests, which are regulated by municipal or national law, may fall within the scope of international treaties. In addition, the subject matter of treaties naturally includes rights and interests of a specifically international character. With the increasing intimacy of relations between nations resulting from improvements in transportation and communication,

² United States Tariff Commission: *Handbook of Commercial Treaties* (1922).

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The interests and relations requiring international regulation constantly increase. International treaties tend more and more to regulate a greater variety of international relations and may be expected in future to reduce to definite rules many of the commercial relations between nations which to-day are without regulation.

The following subjects taken from commercial treaties indicate the wide range of subjects covered by provisions in modern commercial treaties: conditions of residence, travel, and trade; immigration and emigration; police protection and civil rights; admission of diplomatic and consular officers, their rights and activities; vehicles and instruments of communication and transportation; navigation, quarantine, and harbor regulations, and dues relating thereto; conditions for importation, exportation, transit, transfer, and warehousing of merchandise; tariffs and customs laws; protection of patents, trademarks, copyrights, and other industrial property rights; possession and disposal of, or succession to, real and personal property; payment of taxes; rights of commercial, industrial, or financial associations; exemption from military service, municipal functions, forced loans, and extraordinary levies; treatment of commercial travelers and their samples; bounties and drawbacks; internal duties and local dues; treatment of vessels seeking refuge from damage or shipwreck; salvage operations and dues; coasting trade, and port-to-port trade with foreign cargoes; extraterritorial jurisdiction; freedom of religious worship, and right of burial with suitable decorum and respect.

Tendency to Generalize Concessions in Treaties

In regard to all these subjects foreigners in specific cases are protected by treaty and are guaranteed security for their persons, property, navigation, commerce, and industry in the treaty states. In the early stages of their

development treaties were limited to exclusive engagements between the contracting states, but in the course of time the extension to third nations of privileges which had previously been granted to particular states resulted in the development of the most-favored-nation principle. This principle, *i.e.*, the absence of preference in favor of one foreign nation as against others, has continued to gain favor, for since the beginning of the eighteenth century practically every commercial treaty has contained a reciprocal most-favored-nation clause in some form or other.

In addition to the guaranty of most-favored-nation treatment, which will be discussed later, commercial treaties frequently contain, with reference to certain matters, a guaranty to the citizens of one of the contracting parties the same treatment which the citizens of the other receive. This is known as "national treatment." Most-favored-nation treatment, on the one hand, bars discrimination against one foreign nation as compared with another, while national treatment, on the other, excludes discrimination by either of the contracting countries against the citizens of the other as compared with the treatment accorded to its own citizens. When national treatment is reciprocally pledged by treaty between two countries the citizens of either country are entitled to claim in the other the same rights and privileges, in all matters to which the pledge of national treatment relates, which that country accords to its own nationals.³

³ The following is quoted from *Hearings before the Committee on Foreign Relations*, United States Senate, on "Treaty of Commerce and Consular Rights with Germany," Feb. 7, 1924, pt. 3, p. 69:

Senator BRANDEGEE. Some of the members of the committee were not here, Mr. Culbertson, when you began the other day. Will you repeat the distinction which you drew between what is called national treatment and what is called most-favored-nation treatment?

Mr. CULBERTSON. National treatment guarantees equality of treatment between an alien on one side and a national on the other. That is, with respect to the matter in question—let us say that it is the

Nature of the Pledge of National Treatment

While provisions pledging national treatment are quite as common in commercial treaties as those pledging most-favored-nation treatment, the phrase "national treatment," is less familiar than the phrase "most-favored-nation treatment." National treatment, like most-favored-nation treatment, may or may not be reciprocal.⁴ It may be limited in various ways—territorially or otherwise. The type, scope, or extent of national treatment pledged in any treaty must be determined in each case by the language employed.

The term "national treatment" does not occur at all in commercial treaties, but the principle is stated in involved and legalistic language. The language usually employed in pledging national treatment is illustrated by the following provisions of the treaty of July 3, 1813, between the United States and Great Britain:

Duties or charges on vessels. No higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels

right of ships to enter our ports—the alien would pay no other or higher duty than would be paid by an American citizen.

Senator BRANDEGEE. That is between the two nations.

Mr. CULBERTSON. It puts an alien on the same basis as to the paying of tonnage dues, etc., as the national.

Senator BRANDEGEE. It is reciprocal treatment between two nations.

Mr. CULBERTSON. Yes. In the case of most-favored-nation treatment, a third nation is involved, and most-favored-nation treatment is the absence of discrimination between the citizens of two alien states. Most-favored-nation treatment, let us say, with country *A* means that we will not place any other or higher duties upon the commerce of that state than we will place upon the commerce of country *B*, or of any other state. Under a most-favored-nation guaranty, we may discriminate in favor of our own citizens without any violation of the provision; but under a national-treatment guaranty we would violate the treaty if we discriminated in favor of our own citizens.

⁴Examples of pledges of unilateral national treatment may be found in the *Treaty of Versailles*. United States Tariff Commission: *Handbook of Commercial Treaties*, p. 841.

of the United States; nor in the ports of any of His Britannick Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels.

Importation. The same duties shall be paid on the importation into the United States of any articles the growth, produce or manufacture of His Britannick Majesty's territories in Europe, whether such importation shall be in vessels of the United States or in British vessels, and the same duties shall be paid on the importation into the ports of any of His Britannick Majesty's territories in Europe, of any article the growth, produce or manufacture of the United States, whether such importation shall be in British vessels or in vessels of the United States.

Exportation. The same duties shall be paid, and the same bounties allowed, on the exportation of any articles the growth, produce or manufacture of His Britannick Majesty's territories in Europe to the United States, whether such exportation shall be in vessels of the United States or in British vessels; and the same duties shall be paid, and the same bounties allowed, on the exportation of any articles the growth, produce or manufacture of the United States, to His Britannick Majesty's territories in Europe, whether such exportation shall be in British vessels or in vessels of the United States.

Drawback. It is further agreed that in all cases where drawbacks are or may be allowed upon the reëxportation of any goods the growth, produce or manufacture of either country, respectively, the amount of the said drawbacks shall be the same, whether the said goods shall have been originally imported in a British or an American vessel, but when such reëxportation shall take place from the United States in a British vessel, or from the territories of His Britannick Majesty in Europe in an American vessel, to any other foreign nation, the two contracting parties reserve to themselves, respectively, the right of regulating or diminishing, in such case, the amount of the said drawback. (Art. II.)

Using the term "national treatment," the reciprocal pledges recited above are summarized briefly and clearly in the following language:⁵

⁵ United States Tariff Commission: *Handbook of Commercial Treaties*, p. 129.

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NATIONAL TREATMENT is reciprocally pledged (but limited to European territories of Great Britain) in respect to:

(a) All duties or charges imposed in ports of either country on vessels of the other. (Art. II.)

(b) All duties imposed by either country on importation of products of the other, whether imported in vessels of either nation. (Art. II.)

(c) Any duties imposed or bounties allowed by either country on exportation of its products to the other, whether exported in vessels of either nation. (Art. II.)

(d) Any drawbacks allowed by either country on reexportation of products of the other, whether originally imported in vessels of either nation; except when the reexportation is made from either country in ships of the other to any foreign nation, in which case both countries reserve the right to determine the amount of said drawback. (Art. II.)

In this treaty between the United States and Great Britain the reciprocal pledges of national treatment are confined to duties and charges payable on the vessels of either country in the ports of the other and to import and export duties payable on products of the two countries. In many other matters nations may grant to each other reciprocal national treatment. For example, there are treaties to guarantee to foreigners and to citizens identical treatment with respect to any or all of the following matters:

The right to enter all ports and places of either of the contracting countries, and to trade there in all articles of lawful commerce;

All rights, privileges, immunities, and favors concerning the exercise of commerce and industry in either country, and all taxes, charges, or imposts relating thereto;

All privileges, rights, and remedies relating to patents, trademarks, and copyrights in either country;

All civil rights, with special reference to protection of persons and property in either of the contracting countries;

All rights and privileges in courts of justice of either country,

including the employment of advocates or agents, and all fees, taxes, and other official charges relating thereto;

Exemption of each other's citizens from domiciliary visits or search of dwellings, shops, and other premises, and exemption of their books, papers, and accounts from inspection or examination, except under the conditions and with the legal forms applied to citizens of the country;

Acquisition, possession, and disposal of real and personal property in either country, by will or otherwise, and all taxes, duties, or charges of any kind relating thereto;

Payment of general and local taxes, dues, fees, or other obligations of any kind imposed by either country on persons and property, or on the exercise of commerce, professions, trades, and industries;

All rights, privileges, immunities, and exemptions concerning navigation and commerce in either country;

Assistance, protection, and immunities accorded to vessels seeking refuge from damage or shipwreck, and all dues or charges for salvage of stranded or shipwrecked vessels in waters of either country;

All rights, privileges, and immunities relating to police of the ports, and to stationing, loading, unloading, and despatching of vessels;

All dues, taxes, or charges imposed in ports or waters of either country on account of tonnage, harborage, lightage, lighterage, pilotage, towage, salvage, quarantine, and any other charges under whatever name;

Payment of import and export duties, and of drawbacks, premiums, or bounties;

Customhouse formalities, and warehousing charges and formalities in either country.

It is hardly necessary to point out that there is a wide divergence between the treaties of different countries, and even between individual treaties of the same country, with reference to the extent and scope of national treatment. Each particular treaty must be consulted in order to determine whether a given field is covered by a national-treatment pledge, and when so covered, the extent within the field of the pledge.

Reciprocal National Treatment Not Necessarily Reciprocally Equal Treatment

In one sense the scope of the pledge of national treatment is always the same; in another sense it is hardly an exaggeration to say that it is never precisely alike in any two cases. Since national treatment is nothing more than treatment equal to that accorded a country's own nationals, it is necessary, therefore, to inquire what rights, privileges, and obligations the nationals of the contracting countries have. These rights, privileges, and obligations vary with the country. It therefore follows that national treatment may mean much more in a well-ordered state, where persons and property are secure under the law and where citizens enjoy a large measure of industrial and commercial freedom, than in a backward country where laws lag behind material progress. Even in cases where countries are on approximately the same plane of development, domestic policies may differ widely with respect to fiscal, commercial, and industrial matters. Taxes on persons, property, or incomes may be high in one country and low in another. Certain trades, professions, or industries may be treated liberally in one country and in another be burdened with governmental restrictions, obligations, and charges.

Obviously, under these conditions a commercial treaty granting reciprocal national treatment to the citizens of the contracting Powers will not necessarily confer *reciprocally equal* treatment. A citizen of country A, having factories both at home and in country B, with which his government has a treaty guaranteeing national treatment in taxation, may find that his factory at home is taxed lightly while his factory producing similar products abroad is taxed much more heavily. Upon investigation, it may turn out that it is the policy of the second nation to impose not only upon foreigners but upon its own citizens over-

ous taxes on factory property. The treaty is not violated, since the citizen of country *A* obtains identical treatment with the nationals of country *B*.

Patents under Industrial Property Convention

An illustration of reciprocal national treatment and its difference from reciprocally equal treatment is provided by the Industrial Property Convention,⁶ to which almost all important industrial nations are parties. Section 2 provides that the citizens of each of the contracting countries shall enjoy in all the other countries which are members of the Union for the Protection of Industrial Property national treatment with regard to patents, trademarks, and the suppression of unfair competition. Foreigners are to receive the same protection as citizens and to have the same legal remedies against any infringement of their rights. Similar guaranties of national treatment are specified in numerous bilateral treaties between different countries.

It is a well-known fact, however, that some countries give much more liberal treatment to owners of industrial property than do others. The American patent law, in particular, is conspicuously generous to both citizens and foreigners.

No Compulsory Working Clause in American Patent Law

The United States is the only country of any industrial or commercial importance which does not require that inventions protected by its patent law be put into practical operation within a stated time.⁷ In all other coun-

⁶ *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers*, Vol. III, p. 2953.

⁷ Compare, however, *Brown v. Campbell*, 41 App. D.C., p. 499 (1914), and *Dutcher v. Jackson*, 44 App. D.C., p. 465 (1916), opinions written by Mr. Justice Robb.

tries, with a few unimportant exceptions, the patented process or product must be worked or produced in the country granting patent protection within a stated period after the issue of the patent. A variation of this compulsory working clause is the provision that the owner of a patent, if he does not work it himself, must permit licenses to be issued under which the patent can be worked. These compulsory working and license clauses in patent legislation have been adopted from various motives. They are regarded as a protection to the public against the suppression of valuable inventions and against a tendency to monopoly, and in some cases for the purpose of encouraging the establishment of new industries. Under the compulsory working or licensing provisions of certain foreign patent legislation American business men have been forced to erect factories in foreign countries and there produce the articles protected by patent legislation, upon the penalty of forfeiting the protection of the foreign patent laws.

Foreign patentees are under no similar obligation when they seek to sell their patented articles in the American market. They may secure protection for their patent for a period of seventeen years upon the payment of the small sum of thirty-five dollars to the American Government, and thereafter, under the provisions of the Industrial Property Convention, they have the same protection for their industrial property in the American market as is afforded to American citizens, and they are under no obligation to produce the article within the United States. It need hardly be pointed out that in this particular field the foreigner obtains more liberal treatment under the reciprocal guaranty of national treatment in the Industrial Property Convention than is obtained by American citizens within the territories of the other members of the Union for the Protection of Industrial Property.

*Liberal Features of American Patent Laws Extend to
Foreigners as Well as Citizens*

Furthermore, the owner of an American patent, whether a foreigner or a national, is not required to pay annual fees for the maintenance of his patent rights. In almost all foreign countries such fees must be paid or the patent lapses. In some cases these charges amount to hundreds of dollars during the life of the patent. The owner of a patent granted by the United States labors under none of the disadvantages imposed by the patent systems of foreign countries. He may deal as he pleases with his invention; he may use it or he may withhold it from the public, and he may sell the whole or any part of it. He may grant its use throughout the entire country or for any given territory. He may license one or more persons to make, use, or to sell it. He may license some persons to use it for one purpose or another, under certain conditions, or he may refuse to license at all. He may charge what he thinks proper by way of license fees or by way of price for articles made under the patent. These exclusive privileges and advantages of the American patent law and of the rights and remedies connected therewith have for more than half a century been extended to the citizens of all foreign countries on the same terms as to American citizens. No such liberality greets the American citizen who takes out patents in foreign countries. Generally speaking, the life of the foreign patent is shorter than that of the United States patent. The foreign patentee must also pay, periodically, fees to preserve his rights and must comply with provisions of law requiring the working of his patent within the country granting the patent. It may be again pointed out that these patent laws of foreign countries do not discriminate against American inventors in favor of inventors of their own or other countries. The point is, that although foreign states give to American

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- * inventors the same treatment which they accord to all other inventors, the effect is not reciprocal equality so long as the United States, from motives of domestic policy, treats inventors more liberally than do other countries.⁸

Protection against Unfair Competition

The inadequacy of a mere guaranty of reciprocal national treatment was recognized in the revision of the Industrial Property Convention effected in 1911. It was found that the laws of some of the nations, members of the Union for the Protection of Industrial Property, did not afford adequate protection. These were countries whose industrial development was backward and whose citizens were not particularly interested in laws protecting industrial property. No home stimulus existed to induce the legislative bodies of those countries to enact such protective measures. Foreigners doing business in these countries, however, found that they needed more effective protection of their industrial property than was accorded to their own citizens. Article 10½ of the revision of the Industrial Property Convention, therefore, now provides that all the countries, members of the Union, agree to assure to the members of the Union effective protection against unfair competition.⁹

⁸ While virtually all commercial treaties contain pledges of most-favored-nation treatment, or of national treatment, or both, only a few provide for reciprocally equal treatment, and in these exceptional cases the pledge of equal treatment is confined to simple and specific matters, such as license fees payable by commercial travelers, or the right to acquire, possess and dispose of real property. The treaty between Denmark and France of February 9, 1910, for example, provides most-favored-nation treatment with reference to license fees payable by French commercial travelers in Denmark, and further stipulates that Danish commercial travelers shall be subject to an equivalent impost in France.

⁹ For a discussion of the phrase "concurrency déloyale" in the French text of the Convention see Viner, Jacob, *Dumping: A Problem in International Trade*, Chicago, 1923.

Exceptions to National Treatment

The nature of national treatment may be further clarified by a discussion of certain exceptions to the general rule. It is the policy of nations generally to reserve for their own citizens certain rights and privileges which for one reason or another are not extended to aliens. For example, it has been the policy of the United States for over a century to reserve the coasting trade exclusively for vessels of its own citizens. When, therefore, national treatment is pledged in our commercial treaties in terms sufficiently broad to cover this trade, a provision is introduced expressly excepting coastwise shipping. Our Convention of Commerce and Navigation of 1852 with the Netherlands is a case in point.¹⁰ The treaty provides that neither party shall impose upon the vessels of the other, from whatever place arriving, any duties or port charges of any kind, or discrimination, which shall not be imposed in like cases on national vessels. This Convention then provides that: "The present arrangement does not extend to the coasting trade and fisheries of the two countries respectively, which are exclusively allowed to national vessels. . . ."¹¹

In a few foreign countries the coasting trade and national fisheries are reserved as they are by the United States, either by treaty or by statute, for national vessels. In general, however, the policy of discrimination, either by treaty or by statute, between nationals and foreigners is exceptional. It would not be profitable to undertake the

¹⁰ Malloy, *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and Other Powers*, Vol. II, p. 1248.

¹¹ Other treaties of the United States in which the coasting trade is similarly excepted from national treatment and reserved for American ships are the treaties with Belgium (1875), Bolivia (1858), Colombia (1846), Costa Rica (1851), Denmark (1826), Greece (1837), Japan (1911), Norway (1827), Siam (1920), and Spain (1902).

compilation of a list of these exceptional cases, but a considerable number could doubtless be cited from the hundreds of commercial treaties in force. In addition to coasting trade and national fisheries, discriminatory treatment in favor of a country's own nationals is provided for in commercial treaties with reference to acquisition and possession of the soil, particularly in agricultural districts, and to the practice of certain professions and trades, such as druggists, brokers, and peddlers and other itinerant trades.

Exceptional Treatment for Aliens

In contrast to these restrictions, commercial treaties frequently secure in affirmative language *exceptional* treatment for resident aliens. Treaties, for example, exempt citizens of either country residing in the other from all personal military service by land or by sea, from all imposts, forced loans, extraordinary military requisitions and contributions, except the quartering of troops and except charges incidental to possession of landed property, and from the compulsory acceptance in certain countries of judicial and municipal functions, except jury service and the office of guardian for wards of their own nationality.

National Treatment in American Shipping Policy

In the United States the nature of national treatment is illustrated by the controversy over preferential tonnage and customs duties in favor of American ships. Three periods are distinguishable in the development of our policy:

(a) An early period in which national treatment for ships was advocated by the United States but not accepted by foreign nations.

(b) A period during which discriminatory customs du-

ties and tonnage dues were applied in retaliation, particularly against the British Navigation Laws, in an effort to establish marine reciprocity.

(c) A period in which reciprocal national treatment was adopted and applied.

The leaders of the Continental Congress favored the adoption of reciprocal national treatment, as is shown by the instructions of Congress to the ministers empowered by it to negotiate treaties with foreign countries. On June 12, 1776, the Continental Congress appointed a committee of five to prepare "a plan of treaties to be proposed to foreign powers."¹²

On July 18 this committee brought in a report containing a treaty plan. As the colonies were most desirous of obtaining the assistance of France in their struggle for independence, they endeavored to enter into a treaty with that country. With this purpose in mind, the committee, in drawing up its plan, inserted the name of France and that of its king. Articles 1 or 2 of the plan, dealing with trade and commerce, were as follows:¹³

Art. 1. The Subjects of the most Christian King shall pay no other Duties or Imposts in the Ports, Havens, Roads, Countries, Islands, Cities, or Towns of the said united States, or any of them, than the Natives thereof, or any Commercial Companies established by them or any of them, shall pay, but shall enjoy all other the Rights, Liberties, Privileges, Immunities, and Exemptions in Trade, Navigation and Commerce in passing from one Part thereof to another, and in going to and from the same, from and to any Part of the World, which the said Natives, or Companies enjoy.

Art. 2. The Subjects, People and Inhabitants of the said

¹² *Journal of the Continental Congress*, Vol. 5, pp. 433 and 710. The members of the committee were John Dickinson, Benjamin Franklin, John Adams, Benjamin Harrison, and Robert Morris. Two other members, Richard Henry Lee and James Wilson, were later added to the committee.

¹³ *Ibid.*, pp. 576, 577.

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United States and every of them shall pay no other Duties, or Imposts in the Ports, Havens, Roads, Countries, Islands, Cities or Towns of the most Christian King, than the Natives of such Countries, Islands, Cities, or Towns of France, or any commercial Companies established by the most Christian King shall pay, but shall enjoy all other the Rights, Liberties, Priviledges, Immunities and Exemptions in Trade, Navigation and Commerce, in passing from one Part thereof to another, and in going to and from the same, and to any Part of the World, which the said Natives, or Companies enjoy.

These articles, it will be observed, were to pledge reciprocal national treatment.

In negotiating treaties the commissioners of the United States were to use the treaty plan as a guide, but they were not to be bound by it. The American commissioners,¹⁴ sent to the Court of France to propose treaties, to France and other European countries, were instructed with respect to Articles 1 and 2, as follows:¹⁵

There is delivered to you herewith a Plan of a Treaty with his most Christian Majesty of France, approved of in Congress, on the Part of the United States of America.

It is the wish of Congress that the Treaty should be concluded; and you are hereby instructed to use every Means in your Power for concluding it, conformable to the Plan you have received.

If you shall find that to be impracticable, you are hereby authorised to relax the Demands of the United States, and to enlarge their Offers agreeably to the following Directions:

If his most Christian Majesty shall not consent that the subjects (inhabitants) of the United States shall have the Privileges proposed in the second Article, then the United States ought not to give the Subjects of his most Christian Majesty the Privileges proposed in the first Article; but that the United States shall give to his most Christian Majesty the same Privileges, Liberties, and Immunities at least, and the like Favour in all things which

¹⁴ *Journal of the Continental Congress*, Vol. 5, pp. 827, 828. The commissioners were Benjamin Franklin, Silas Deane, and Thomas Jefferson.

¹⁵ *Ibid.*, pp. 813, 814.

any foreign Nation the most favoured shall have; provided, his most Christian Majesty shall give to the United States the same Benefits, Privileges and Immunities which any the most favoured foreign Nation now has, uses, or enjoys. And, in Case neither of these Propositions of equal Advantages are (is) agreed to, then the whole of the said Articles are (is) to be rejected, rather than obstruct the further Progress of the Treaty.

In other words, if reciprocal national treatment could not be secured, then reciprocal most-favored-nation treatment might be substituted; but in either case, the arrangement was to have been on a reciprocity basis, or, the assumption was, it would fail altogether.

The treaty of amity and commerce (February 6, 1778)¹⁶ which the American commissioners concluded with the representative of France did not provide for national treatment, as outlined in the "plan of treaties," but made provision (Arts. 2-4) for reciprocal most-favored-nation treatment. With respect to special and exclusive agreements it was declared in the preamble of the treaty that the contracting parties, "willing to fix in an equitable and permanent manner the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish between their respective countries . . . have judged that the said end could not be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burthensome preferences which are usually sources of debate, embarrassment and discontent; by leaving, also, each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility and the just rules of free intercourse; reserving withal

¹⁶ Malloy, *Treaties, Conventions, Protocols, etc., 1776-1909*, Vol. I, p. 468.

to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages."¹⁷

Further information on the views of the "Fathers," with respect to commercial policy, is contained in a message of the Congress to the Burgomasters and Senate of the Imperial Free City of Hamburg. The message, written by the President of the Congress, on December 24, 1783, in reply to a request from the rulers of Hamburg, that the United States "favor and countenance the trade of our merchants and to suffer them to enjoy all such rights and liberties as you allow to merchants of nations in amity,"¹⁸ stated that, "having founded the commercial system of these States on the basis of equality and reciprocity, Congress will cheerfully meet the wishes of the Burgomasters and Senate of Hamburg."¹⁹

Marine Reciprocity, Temporarily Abandoned, but Finally Established

In a later chapter dealing with shipping policy the struggle to establish marine reciprocity is reviewed. National treatment in shipping failed at first because foreign nations, particularly Great Britain, refused reciprocity. The founders of the American Republic then began a struggle against the British Navigation Laws, a struggle ultimately successful. Acts in 1815 and 1828 made bids for reciprocity in the direct and indirect trades respectively. Foreign nations in general accepted promptly the offer made, but Great Britain was more deliberate. On her indirect trade in our ports the American preferential customs dues and tonnage taxes remained in force until 1850. In 1849, the British removed the discriminatory

¹⁷ Malloy, *Treaties, Conventions, Protocols, etc., 1776-1909*, Vol. I, p. 468.

¹⁸ *The Diplomatic Correspondence of the United States of America, 1783-1789*, Vol. I, p. 46.

¹⁹ *Ibid.*, p. 50.

provisions from their navigation laws, and the American Secretary of the Treasury, Meredith, then issued the following order, establishing complete maritime reciprocity with our most formidable rival:

First, in consequence of the alterations of the British navigation laws, British vessels from British or other foreign ports will (under our existing laws) after the 1st of January next, be allowed to enter our ports with cargoes of the growth, manufacture, or production of any part of the world.

Second, such vessels and their cargoes will be admitted from and after the date before mentioned on the same terms as to duties, imposts, and charges as vessels of the United States and their cargoes.

Marine reciprocity was achieved gradually and is now the accepted policy of the United States. In addition to the statutes enacted by Congress it rests upon:

(1) A series of Presidential proclamations. For example, on December 28, 1866, the President issued a proclamation under the provisions of the acts of January 7, 1824, and of May 24, 1828, declaring that discriminations no longer existed against American ships in French ports and that after January 1, 1867, French ships in both direct and indirect trade would have to pay no other or higher duties than were paid by American ships.²⁰ Other cases will be found in the statutes of the United States.

(2) Commercial treaties guaranteeing reciprocal national treatment. This country has concluded some thirty or forty such treaties, and it was such of these as were still in force in 1920 that the President was directed to denounce by section 34²¹ of the Merchant Marine Act of 1920.

²⁰ 14 *U. S. Statutes at large*, p. 818.

²¹ The full text of this section follows: "That in the judgment of Congress, articles or provisions in treaties or conventions to which the United States is a party, which restrict the right of the United States to impose discriminating customs duties on imports entering

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To a very large extent, therefore, national treatment is the basis of our commercial treaty structure. Any attempt to reverse this policy would not only run counter to the spirit of modern treaty negotiations, which tends to the progressive assimilation of rights of aliens with rights of nationals, but it would also create a very serious commercial treaty problem for the United States.

Attempt to Abandon National Treatment in 1920

An interesting example of the difficulties encountered in attempting to change by statute an established policy confirmed by a nation's treaties is found in section 34 of the Merchant Marine Act of 1920, already referred to. This section directs the President to give notice to foreign countries that such portions of our treaties as restrict the right of the United States to impose discriminating customs dues and discriminating tonnage dues against foreign goods and vessels in favor of the goods and vessels of the United States are to be terminated. This section was enacted at a time when the United States was a party to some thirty treaties guaranteeing national treatment to American vessels in foreign ports in exchange for similar treatment of foreign vessels in American ports. The motive underlying this section was to end the policy of reciprocal national treatment as applied to shipping. It was favored particularly by interests desirous of having the

the United States in foreign vessels and in vessels of the United States, and which also restrict the right of the United States to impose discriminatory tonnage dues on foreign vessels and on vessels of the United States entering the United States should be terminated, and the President is hereby authorized and directed within 90 days after this Act becomes law to give notice to the several Governments, respectively, parties to such treaties or conventions, that so much thereof as imposes any such restriction on the United States will terminate on the expiration of such periods as may be required for the giving of such notice by the provisions of such treaties or conventions." (*U. S. Statutes at large*, Vol. 41, p. 1007.)

policy of discrimination in favor of American vessels, similar to that which existed in our early history, restored to our navigation laws. Upon the termination of our treaties, subsection J 7 of section IV of the tariff act of 1913 would have automatically established a discount in customs dues in favor of American ships and would have deprived foreigners of treatment equal to that granted American vessels. This subsection²² provided for a discount of 5 per cent ad valorem on all duties imposed on goods imported in vessels admitted to registration under the laws of the United States. The United States Supreme Court²³ held it to be inoperative by reason of the stipulation in the law that it shall not "be so construed as to abrogate, or in any manner impair or affect the provisions of any treaty concluded between the United States and any foreign nation." A termination of the treaties, therefore, would have made this discount provision effective without further action by Congress.

President Wilson, President Harding, and President Coolidge declined to give effect to this provision for the denunciation of certain portions of our commercial treaties. No way is available under international law for terminating without the consent of both parties certain articles or provisions of treaties without terminating the treaties as a whole. It is probable that certain countries might consent to a termination of particular articles in their treaties with the United States guaranteeing national treatment. Other countries, however, would very probably refuse. Had even one of the thirty or more countries with which we have such treaties refused to agree to a partial termination of its treaty, and had the United States preferred to maintain rather than denounce the whole treaty, all the other countries having *most-favored-*

²² Repealed by the tariff act of 1922.

²³ *Five Per Cent Discount Cases*, 243 U. S., p. 97.

nation clauses in their treaties with the United States could have claimed for their vessels in American ports the same treatment which the vessels of the nation declining to terminate the national treatment provisions of its treaty continued to receive.

In fact, the practical result of section 34, if applied, would be to wipe out entirely our treaties with foreign countries. Whatever the theory of the section may have been, the only practical alternative was to terminate completely all our commercial treaties.

To illustrate how the most-favored-nation clauses might have been affected, let us suppose that the United States has a commercial treaty with country *A* which is to run for a definite term of years, let us say, until 1930. This treaty pledges reciprocal national treatment in regard to a number of important aspects of commerce. Under it the citizens of country *A* would be entitled to national treatment in American ports in respect to the matter specified, at least until 1930. If, however, the citizens of country *A* continue to receive national treatment until 1930, all other nations having most-favored-nation clauses in their treaties with the United States would claim the same treatment for their citizens in American ports.

A Liberal Commercial Treaty Policy

The policy represented by section 34 is thoroughly undesirable. An extension rather than a curtailment of guaranties of national treatment should be the objective of any liberal commercial treaty policy. The entire issue, however, was raised and fully considered when, in 1924, the American Department of State sent to the Senate for ratification a new commercial treaty negotiated with Germany and embodying the century-old American policy of marine reciprocity. The treaty was bitterly attacked by certain shipping minorities. In a letter, dated May

13, 1924, to Senator Lodge, Chairman of the Committee on Foreign Relations, United States Senate, Mr. Hughes, Secretary of State, said:²⁴

It is hardly necessary for me to refer to the general situation with respect to our commercial treaties. With a number of countries we have no commercial treaties, and the treaties we have should be supplemented and brought up to date. Important subjects are not covered and as to other subjects more precise and definite provisions are required. We are therefore faced with the necessity of negotiating commercial treaties which should be responsive to our needs, and to this end there has been a most careful study of the questions presented. In this examination we have been led to consider the fundamental policies which our commercial treaties should embody. The result of this examination appears in the pending treaty with Germany.

Apart from these considerations the policy of giving reciprocal national treatment, as embodied in existing treaties so far as they go, and as defined in the clauses in the pending treaty with Germany, is believed to be a sound one.

If the United States is to have its proper place as a maritime power and its vessels are to enter the ports of the world, it must insist upon freedom from discriminations in such ports by the respective sovereigns in relation to their own vessels. How is the United States to obtain such freedom from discriminations? It is said that it may retaliate; but, in this sense, retaliation is only a means to an end, and the end is to obtain the desired freedom from discrimination. The way to assure this freedom is by agreement, and, of course, what the United States asks it must give. Thus we have, as a natural result, the historic provisions of our commercial treaties with respect to reciprocal national treatment. Provisions of this type have become common to and appear in the treaties of practically all nations.

* * * This policy is supported by the provisions aimed at securing protection from discrimination which are found in article

²⁴ From *Hearings before the Committee on Foreign Relations*, United States Senate, on "Treaty of Commerce and Consular Rights with Germany," Pt. 6, pp. 302-306.

317 of the tariff act of 1922. In this case, as in the case of tonnage duties, the object is attained when another State is willing to agree not to impose discriminatory exactions upon our commerce, and this, of course, calls for similar agreement upon our part. Either we are to have a policy of discriminations or a policy of obtaining immunity from discriminations. If the latter policy is adopted, then we achieve our purpose in securing agreements by which States will not discriminate against us.

I should hardly think it necessary to argue the question whether a policy of discriminations, as an end in itself, would be in our interest, for our history would seem sufficiently to show that it would not. Discriminations in favor of our own vessels will certainly produce retaliation by foreign States whose tonnage is adversely affected by the American discriminatory action. If we impose discriminatory tonnage or cargo duties, they will be imposed by foreign powers against our vessels. The effect of such retaliatory measures would probably be that if American ships coming from abroad entered American ports with full cargoes they would go back empty. Any attempt by Congress to alleviate the situation by lessening charges for transportation could be met by like action on the part of the foreign State to which exports from the United States were destined. A policy of discrimination and retaliation, as an end in itself, would be a policy fatal to our interest, not only in the highest degree embarrassing so far as our shipping interests are concerned, but having by-products in resentment and ill-will and in the encouragement of other efforts to cripple our trade which would make us pay dearly for our experiment. A policy of discrimination and retaliation, not as an end in itself but merely to enforce proper regard for our own interests by freeing us from discriminations abroad would find its aim achieved in agreements such as the pending Treaty with Germany and other treaties of like import, under which discriminations would be impossible.

* * *

The abandonment of reciprocal national treatment with the design of permitting discriminatory tonnage and cargo duties favorable to American shipping would mark the beginning of a bitter strife in which reprisal would follow reprisal and the very interests sought to be benefited would be jeopardized. To seek such a war as an end in itself would seem to be a desperate recourse. It is believed that American shipping will prosper

far more greatly by a policy which insures for it through appropriate international agreements immunity from unjust discriminations.

The German-American commercial treaty to which Mr. Hughes refers in the above letter was subsequently, on February 10, 1925, approved by the Senate of the United States with two reservations to be set forth in an exchange of notes between the parties to the treaty. The second reservation relates to national treatment of shipping. It stipulates that the provisions of the treaty guaranteeing reciprocal national treatment for the ships of the respective parties are to remain in force for twelve months from the date of exchange of ratifications and if not then terminated on ninety days' previous notice shall remain in force until Congress shall enact legislation inconsistent therewith. If Congress shall enact such legislation, these provisions shall automatically lapse at the end of sixty days from such enactment and after such lapse the parties to the treaty shall enjoy all rights which they would have possessed if the treaty had contained no reciprocal guaranties of maritime reciprocity.

National Treatment in Colonies Is "the Open Door"

A general guaranty of national treatment in the colonies of colonial powers would mean the establishment of the open door for commerce. The general rule, however, is not to include trade between the mother country and the colonies within general guaranties of national treatment in commercial treaties, *i.e.*, most of the powers have no open door in their colonies. When mercantilism was at its height, it was not uncommon for a colonial power to exclude entirely citizens of foreign countries from colonial trade. For example, in the treaty between Denmark and

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Great Britain,²⁵ signed July 11, 1670, it is provided that "the Subjects of the King of Denmark shall not come to the British Colonies, unless by special license of the King of Great Britain first desired and obtained." In later centuries, particularly under the liberalized commercial policy of the nineteenth century, Great Britain granted in many of her treaties most-favored-nation treatment throughout "the whole extent of the dominions and possessions" of Great Britain.²⁶

In the case of at least two treaties, Great Britain even went so far as to grant to the commerce of foreign states treatment in her colonies equal to that accorded British commerce. These were the treaties with Belgium in 1862 and with the German Zollverein in 1865. By these treaties Great Britain guaranteed to Belgian and German goods in her colonies the same treatment as was granted to British goods. Using other phraseology, Great Britain guaranteed the open door in her colonies. This policy has since been abandoned. It represented a liberal step in commercial policy and if pursued generally, not only by Great Britain but by other powers, would have contributed much to the commercial peace and to the welfare of the world.

National Treatment in British Treaties Interfered with Preference

The British Dominions, however, particularly Canada, desired to establish preferential duties in favor of British goods, and after numerous refusals to terminate these treaties, the London government finally yielded and they were denounced in 1897. The reasons for this step were stated by Lord Salisbury in an instruction to the

²⁵ de Bernhardt, Gaston, *Handbook of Commercial Treaties, etc.*, 1912, p. 250.

²⁶ *Ibid.*, p. 218.

British Minister at Brussels, July 28, 1897. Referring to the Belgian treaty, and after stating that "the general stipulations of the treaty in question, being based on the principle of most-favored-nation treatment, are in accordance with the present views of Her Majesty's Government," he excepted Article XV, which read as follows: "Articles, the produce or manufacture of Belgium, shall not be subject in the British colonies to other or higher duties than those which are or may be imposed upon similar articles of British origin." In Moore's *Digest* it is then stated:

Lord Salisbury pronounced this stipulation to be, in its effect, "entirely unusual in commercial treaties," so that it was probable that its insertion was due to oversight or to want of adequate consideration. He adverted to the fact that the British self-governing colonies had for many years "enjoyed complete tariff autonomy," and that by reason of the engagement in question they found themselves committed by treaty to a commercial policy which was "not in accordance with the views of the responsible colonial ministers, nor adequate to the requirements of the people." Besides, the article constituted "a barrier against the internal fiscal arrangements of the British Empire, which is inconsistent with the close ties of commercial intercourse which subsist, and should be consolidated, between the mother country and the colonies." In conclusion, Lord Salisbury expressed a desire to conclude "a new treaty, from which the stipulations of Article XV shall be excluded, and which whilst containing a clause providing for the facultative adhesion of the British self-governing colonies, shall in other respects be similar to the treaty now denounced."

On the same day Lord Salisbury addressed a note, in substance the same, to Sir F. Lascelles, British ambassador at Berlin, giving notice of termination of the treaty with the German Zollverein of May 30, 1865, Article VII of which was the same, *mutatis mutandis* as Article XV of the treaty with Belgium.²⁷

It is interesting to note that the same relation between guaranties of national treatment and guaranties of most-

²⁷ Moore's *Digest*, Vol. V, pp. 317, 318.

‘ favored-nation treatment is found in the situation created by the Belgian and Zollverein treaties as that which might have been created by section 34 of the United States Merchant Marine Act of 1920. These treaties guaranteed to Belgium and the Zollverein national treatment in the British colonies. When Canada, for example, granted preferential treatment to British goods, these treaties automatically extended the same treatment to Belgian and German goods. But the placing of these countries on a preferential basis with reference to third countries made them “favored nations,” and thus brought into play all the most-favored-nation clauses in those British treaties which were applicable to Canada. The result was a grant to practically all countries with the notable exception of the United States of the concessions made by Canada in favor of British goods.

Rights of Aliens Not Derived Solely from Treaties

Before leaving the subject of national treatment, a word should be said on the rights of aliens not derived from treaties.

The fact that no treaty exists between two nations does not necessarily mean that the citizens of the one have no rights whatever in the other. Moreover, a comparison shows at a glance that some treaties are far more complete and detailed than others in specifying the rights and privileges assured to citizens of the contracting states in the countries concerned. This does not mean that citizens of states having less complete treaties with a given country necessarily have fewer rights in that country than other foreigners whose home states have more extensive or more detailed treaties with the country in question. Numerous rights and privileges are assured to aliens in all civilized countries by purely domestic legislation through national or municipal laws, whether these be general laws apply-

ing to nationals and aliens alike, or special laws concerning aliens alone.

In the progress of many centuries, the legal position of the alien has advanced from that of complete outlawry in the days of early Rome²⁸ to practical assimilation with nationals in most civilized countries at the present time. Provided he owns any nationality at all, an alien cannot be outlawed in foreign countries, but must be afforded protection of his person and property.

This is not the place to enumerate the rights and disabilities of different classes of aliens under national laws in different countries. The details vary from state to state and, unless guaranteed by treaty, are subject to change without notice. In a general way, the legal position of the resident alien in civilized countries is, in his private relations, practically the same as that of the national or citizen, except as affecting minor disabilities in certain countries concerning the acquisition and conveyance of landed property, ownership of national vessels, and certain restrictions or prohibitions based on social and economic grounds. These cover such laws as those relating to immigration, the exercise of certain trades or professions, and the imposition of surtaxes on foreign corporations. Briefly stated, the modern tendency has been to bring about an approximation of the alien to the citizen in the enjoyment of civil as contrasted with political rights. In the United States, for example, resident aliens in times of peace²⁹ are entitled to the benefit of the provision of the Federal Constitution that no state shall deprive "any person" of life, liberty, or property without due process of law, or deny to "any person" the equal protec-

²⁸ But cf. *Exodus 22:21* and *Leviticus 24:22*.

²⁹ In times of war conditions are changed. Also foreign corporations are often placed under special disabilities. For extensions of the subject the reader should consult a work on international law.

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tion of the law. These rights and privileges include both personal and property rights. Moreover, the legislatures of the several states have full power to confer upon aliens within their jurisdiction rights which they would not otherwise have. Similar provision in these respects is made by all civilized countries, the general principles being either embodied in their constitutions or regarded as so fundamental that no express declaration or guarantee is required.

Aliens under International Law and Custom

In addition to, and independent of, any rights assured to aliens by the local law of civilized states, international law and established custom have secured for the foreigner a certain standard of justice and a minimum of rights relating to life, liberty, and property by which a state must be guided in its treatment of aliens, quite apart from any treaty it may have with the alien's home state. In short, every state is compelled by the law of nations at least to grant to aliens equality before the law with its own citizens as far as safety of person and property is concerned; and corrupt administration of the law in the case of natives is held to be no excuse for the same against foreigners.

From what has been said it will be readily understood that treaties between highly developed nations may safely be less complete and specific with reference to fundamental rights than treaties between countries on a lower plane of civilization and culture, or between countries fundamentally different in morals or religion. It must, therefore, not be assumed that the more specific a nation's treaties with a given country may be, the more comprehensive are the rights of its citizens as compared with those of other foreigners in that particular country; or that, because nothing is said about certain rights in trea-

ties with a given country, foreigners in that country are therefore without those rights. As often as not, the reverse may be true; for the less that may be taken for granted, the more detailed must be the expression of rights to be assured by treaties.

CHAPTER III

COMMERCIAL TREATIES: MOST-FAVORED-NATION TREATMENT

"Harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; establishing with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the Government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard." (George Washington's Farewell Address, September 17, 1796.)

Most-Favored-Nation Treatment Defined

Equally important and better known than national treatment is the principle of most-favored-nation treatment. National treatment, as already pointed out, is a pledge by a nation to grant to aliens in the matters specified the same treatment that it grants to its own citizens; most-favored-nation treatment, on the other hand, is a pledge to grant in the matters specified the same and equal treat-

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ment to the citizens of the other state as to the citizens of any third state. The purpose of the most-favored-nation clause is not to establish "a most favored nation," i.e., a nation more favored than others. On the contrary, its function is to maintain equality of treatment and to insure to each state that it will at all times be treated as favorably as the state which is "most favored." The effect of the clause in operation is to obtain for each of the contracting states any benefits which momentarily make a third nation "favored." A more truly descriptive term would be "the equally-favored-nation clause."

It is always a matter of importance to a state to be assured that the treatment its citizens receive at the hands of another shall not be less favorable than that which the other accords to the citizens of a third state. The principle of most-favored-nation treatment is based upon the conception that a state is entitled to, and should grant, equality of treatment in commercial relations. As a safeguard against oversight at the moment of negotiation and to obviate the necessity of subsequent negotiations, the provision known as the most-favored-nation clause was devised to insure to the contracting states not only the benefits of concessions previously made but also of those subsequently to be made by either of the contracting states.

Most-favored-nation clauses occur in commercial treaties in a variety of forms.¹ For the purpose of this discussion, however, it is only necessary to distinguish—

- (a) The bilateral and the unilateral
- (b) The unconditional and the conditional.

The bilateral clause is reciprocally binding on both parties to the treaty and is the usual form in all treaties between states on the same international plane. The unilateral clause, which obligates only one nation in favor of

¹ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, pp. 389-456.

another, has been common in the treaties between western nations and those of the East.²

Unilateral Pledges in Treaties with Non-European States

The principle of unilateral most-favored-nation treatment, being exceptional, requires a word further in explanation. Western nations have from time to time required of non-European peoples pledges of equal commercial treatment without making reciprocal pledges. Unilateral most-favored-nation clauses, for example, still exist in treaties of the United States with China (1858), Egypt (1884), Morocco (1836), and Muscat (1833); and with reference to specified objects also in the treaties with China (1903), Ethiopia (1914), and Honduras (1864).³

This one-sided pledge of commercial equality in treaties is usually associated with the surrender by non-European states of jurisdiction over aliens within their territories. China and certain other states have signed treaties which bind them to commercial equality without any reciprocal pledge being given, and which grant to foreign states the right to exercise jurisdiction over their nationals by courts and authorities established and regulated by their own municipal legislation, usually through their consular representatives.

Emancipation from Western Control Beginning

Turkey has abolished the Capitulations and asserted within her own territory judicial and commercial autonomy.⁴ Japan, the first to succeed in freeing herself, early decided that the proper and most effective course was to

² *Ibid.*, p. 400.

³ The treaty of 1920 between the United States and Siam contains pledges of most-favored-nation and national treatment in the usual reciprocal form. See U. S. Tariff Commission, *Handbook of Commercial Treaties*, 1922, pp. 153-156.

⁴ Treaty of Lausanne, signed July 24, 1923.

prove to the leading powers of western civilization that she had so reformed her laws and judicial procedure that the personal and property rights of foreigners in Japan would be fully protected, and that the Japanese administration was capable of carrying out treaty pledges in these respects. Accordingly, Japanese statesmen applied themselves energetically to the completion and adoption of the new law codes. It was further decided, as a matter of policy, that Great Britain should be made the first and constant objective in this campaign for revision of Japan's earlier treaties, by which her judicial and tariff autonomy were restricted in various ways.⁵ Finally, in the early nineties, a new treaty was drafted and submitted to the British Foreign Office, which by this time was convinced that Japan's progress in judicial reform justified the withdrawal of extraterritorial jurisdiction and the concession of the treaty revision for which she had asked.

A new treaty, based on the principle of reciprocal and unconditional most-favored-nation treatment and pledging reciprocal national treatment in many respects, was accordingly signed in July, 1894, and ratified the following month. It was a valuable acquisition for Japan, for it meant the speedy assent of the other powers whose joint consent was necessary to the recognition of Japan's full autonomy in judicial and other matters. New treaties were soon concluded with other countries, and by the year 1900 Japan's emancipation from the restrictions and safeguards imposed by the earlier treaties was complete; all the leading nations had, by treaties, confirmed her new

⁵ The United States was the first nation to acknowledge Japan's right to autonomy. A commercial treaty was concluded on July 25, 1878, recognizing Japan's exclusive control over commercial matters but the treaty never became effective because other nations did not agree to the same concessions. Mexico was the first western state to conclude a treaty (Nov. 30, 1888) with Japan on terms of complete equality.

status. Japan's new and thoroughly modern commercial treaties incorporated the principle of reciprocal most-favored-nation treatment in the usual form; that is to say, unconditional most-favored-nation treatment in the treaties with European countries, and conditional treatment in those with the United States and other American nations.

Among recent treaties pledging most-favored-nation and national treatment in the unilateral form, the most important are the Paris Peace Treaties, particularly with Germany, Austria, Bulgaria, and Hungary. These conceded to the Allied and Associated Powers, without reciprocity, complete and unconditional most-favored-nation and national treatment, for a limited time, on a very extensive scale.⁶

Language Used in Conditional and Unconditional Pledges

The conditional and unconditional forms of the most-favored-nation clause parallel the bilateral and unilateral forms. There are clauses which are bilateral-unconditional, unilateral-unconditional, bilateral-conditional, and unilateral-conditional. No well-recognized phraseology marks these different forms in all treaties. In recent treaties, however, the conditional and unconditional forms have been made clear.

In treaties of the United States the most-favored-nation clause was almost always ⁷ before 1925 expressed in what

⁶ See U. S. Tariff Commission: *Handbook on Commercial Treaties*, 1922. The same pledges are given to the United States, likewise without reciprocity, in the separate Peace Treaty of 25 Aug., 1921, with Germany.

⁷ The United States, before 1925, when the policy was generally adopted, had been party to three treaties specifically pledging unconditional most-favored-nation treatment, namely the treaty with Switzerland (1850), the treaty with the Orange Free State (1871), and the treaty with Serbia (1881). Of these treaties that with Switzerland was terminated upon notice from the United States, 1890, and that with the Orange Free State, when the State ceased to exist.

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is known as the conditional form, of which the following, from the treaty of 21 February, 1911, between the United States and Japan is a typical example:

Except as otherwise expressly provided in this Treaty, the High Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favor or immunity which either Contracting Party has actually granted, or may hereafter grant, to the citizens or subjects of any other state shall be extended to the citizens or subjects of the other Contracting Party gratuitously, *if the concession in favor of that other State shall have been gratuitous,* and on the same or equivalent conditions, if the concession shall have been conditional.* (Art. XIV).

The following example of unconditional most-favored-nation clause is taken from the treaty of August 1, 1911, between Great Britain and Bolivia:

The High Contracting Parties agree that, in all matters relating to commerce and industry, any privilege, favour, or immunity whatever which either High Contracting Party has actually granted or may hereafter grant to any other foreign State shall be extended immediately and unconditionally to the subjects or citizens of the other Contracting Party; it being their intention that the commerce and industry of each country shall be placed, in all respects, by the other on the footing of the most favoured nation. (Art. V.)^a

This is the form of most-favored-nation clause generally used (with slight variations in the wording) in the treaties of Great Britain^b and of other European countries.

A comparison of the two forms of most-favored-nation clause quoted above will show the essential difference between them to be: The conditional form recognizes and records a distinction between *concessions gratuitously*

^a de Marten, G. Fr.: *Recueil de Traité*s, 3rd series, Vol. VIII, p. 825.

^b For a compilation of most-favored-nation clauses in the treaties of Great Britain, see *Parliamentary Papers*, 1907, Cd. 3395.

made, and concessions made in return for an equivalent; whereas the unconditional form names no conditions or circumstances limiting the immediate and automatic extensions of any concession. Both forms recognize in principle that any act of either party to a treaty which makes a third power a "favored nation" is contrary to the treaty and entitles the party discriminated against to the same favor. The distinction, however, is—and this is fundamental—that under the conditional interpretation a favor granted to a third nation *for a compensation* does not create in the technical sense a "favored" nation, and the other party to the treaty is therefore unable to claim the advantages of the concession without offering an equivalent concession.

Interpretations of the Indefinite Forms of Most-Favored-Nation Pledge

Expressed in the foregoing forms, whether conditional or unconditional, the language is definite and clear, leaving little occasion for quibbling or misunderstanding. But in the so-called general or indefinite form the clause merely states in general terms that any favor, privilege, or immunity granted by either contracting party to any third state shall be likewise accorded to the other contracting party. The language of the clause is manifestly open to varying constructions—it is in fact well known that directly opposite views have been taken by American and European authorities as to whether the mutual concessions are to be regarded as having been made conditionally or unconditionally.

No single feature of modern commercial treaties has occasioned more difficulties of interpretation and application than the most-favored-nation clause. Occurring almost universally, in widely different circumstances, in both the conditional and the unconditional forms, or in the general

form, and in a veritable network of treaties, this clause has contributed at once to the solution of some, and to the creation of other, very serious problems in commercial relations.

Most-Favored-Nation Treatment in Specified Matters

Most-favored-nation stipulations in treaties are not confined to a single clause pledging reciprocal privileges, favors, or immunities in comprehensive and general terms. In addition to a general or covering clause, resembling those quoted above, treaties usually contain express provisions stipulating most-favored-nation treatment in respect to specified matters, often in language which does not include the use of the words "most-favored nation."

Thus in the treaty of 1911 between the United States and Japan, most-favored-nation treatment is reciprocally pledged, in the conditional form, with regard to the following matters:

(a) All duties imposed by either country on importation of products of the other, from whatever place arriving. (Art. IV.)

(b) All duties or charges imposed by either country on exportation of any article to territories of the other. (Art. V.)

(c) Any prohibitions imposed by either country against importation or exportation of any article to or from territories of the other; except sanitary measures, and measures to protect animals or useful plants. (Art. V.)

(d) All facilities, privileges, and immunities granted in ports of the territories of either country to vessels charged with regular scheduled postal service of the other contracting party, whether owned by the state or subsidized by it for the purpose. (Art. XII.)

American Statesmen on Conditional Interpretation

The conditional interpretation¹⁰ of the most-favored-nation principle suggests the analogy of the Anglo-Saxon

¹⁰ Among European jurists who approve of the conditional construction are Westlake and de Martens. For a full discussion of the

law of contracts which requires a consideration to make a contract binding. In American treaty discussions the conditional interpretation, as distinguished from the form,¹¹ appeared as early as 1787 in a decision by John Jay, then Secretary for the Department of Foreign Affairs. The circumstances were as follows: The treaty of 1782 between the United States and the Netherlands had provided that subjects of the contracting states should pay in the ports each of the other "no other nor greater duties or imposts, of what ever nature . . . than these which the nations the most favoured are or shall be obliged to pay"; and that they should "enjoy all the rights, . . . (etc.) in trade, navigation, and commerce which the said nations do or shall enjoy." This treaty contained no conditional qualification. In 1787 the minister for the Netherlands protested against an Act of the Legislature of Virginia which exempted French brandies imported in French and American vessels from certain duties to which like commodities imported in Netherlands vessels remained liable. Mr. Jay, in a report to Congress concerning the matter, in October, 1787, said:

It is observable that this article takes no notice of cases where compensation is granted for privileges. Reason and equity however, in the opinion of your Secretary, will supply this deficiency. . . . Where a privilege is gratuitously granted, the nation to whom it is granted becomes in respect to that privilege a favored nation . . . but where the privilege is not gratuitous, but rests

conditional construction of the most-favored-nation clause in its various applications, see Crandall, S. B.: Sections 172-177, and the authorities and judicial decisions there cited. A digest of decisions of American courts construing treaties, arranged by countries and treaties, is given in the same work, Appendix 1:466-634. For the operation of the most-favored-nation clause, see also Jones, *Annals American Academy*, Vol. 32, pp. 119-29, and Hornbeck, Stanley K.: *A Most-Favored-Nation Clause in Commercial Treaties*. Published as a bulletin of the University of Wisconsin, 1910.

¹¹ The conditional form is found in the treaty of 1778 with France.

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on compact, in such case the favor, if any there be, does not consist in the privilege yielded but in the consent to make the contract by which it is yielded. . . . The favor therefore of being admitted to make a similar bargain is all that in such cases can reasonably be demanded under the article. Besides, it would certainly be inconsistent with the most obvious principles of justice and fair construction, that because France purchases, at a great price, a privilege of the United States, that therefore the Dutch shall immediately insist, not on having the like privileges at the like price, but without any price at all.¹²

Other examples of the conditional conception of the most-favored-nation principle in commercial treaties are supplied by declarations of American statesmen on various occasions.

By an act of Congress, March 3, 1815, the vessels of foreign countries were exempted from discriminating duties in ports of the United States, on condition of a like exemption of American vessels in the ports of such countries. The exemption was granted by Great Britain, but not by France, with the result that French vessels continued to pay higher duties in the ports of the United States, while British vessels became exempt. By article 8 of the treaty of April 30, 1803, ceding Louisiana to the United States, it was provided that "the ships of France shall be treated upon the footing of the most favored nations" in the ports of the ceded territory. On the strength of this stipulation, the French Minister at Washington wrote to the Secretary of State (Mr. Adams) saying that he had been directed by his government to inquire as to the truth of the statement made by several masters of merchant vessels, that French vessels were not treated in the ports of Louisiana upon the footing of the most favored nation. He had found the allegation to be true, and that protests had been made in vain to the local authorities.

¹² See Crandall, S. B.: *American Journal of International Law*, 1913, pp. 708, 709.

He therefore asked that orders be issued by the President, so that in future the eighth article of the treaty should receive its entire execution, and that the advantages granted to Great Britain in all ports of the United States should be secured to France in the ports of Louisiana.

In his reply, December 23, 1817, Mr. Adams said:

The eighth article of the treaty of cession stipulates that the ships of France shall be treated upon the footing of the most-favored nations in the ports of the ceded territory; but it does not say, and can not be understood to mean, that France should enjoy as a free gift that which is conceded to other nations for a full equivalent.

It is obvious that if French vessels should be admitted into ports of Louisiana upon the payment of the same duties as the vessels of the United States, they would be treated, not upon the footing of the most-favored nation, according to the article in question, but upon a footing more favored than any other nation; since other nations, with the exception of England, pay higher tonnage duties, and the exemption of English vessels is not a free gift, but a purchase at a fair and equal price.

Replying, finally, in a note of March 29, 1821, to the argument that any advantages granted to other nations, either reciprocally or unconditionally, must be given to France in the ports of Louisiana, because the treaty stipulation in question was unconditional in form, Mr. Adams declared that this was immaterial, "and that, whether expressed or not, no claims to a favor enjoyed by others could justly be advanced by virtue of any such stipulation without granting the same equivalent with which the advantage had been purchased."¹³

The conditional conception of the proper functions of the most-favored-nation clause and reciprocity agreements, and of the relation between the two, was clearly stated by Secretary of State Sherman in 1898. The negotiations

¹³ See Moore's *Digest*, Vol. V, pp. 257, 258.

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undertaken by Mr. Kasson,¹⁴ as plenipotentiary for the making of reciprocity agreements under authority of section 3 of the tariff act of 1897, were under way. Mr. Buchanan, our Minister to Argentina, in a communication to the State Department, had expressed the opinion that:

While any arrangement might be carried through here contemplating a general tariff reduction on *articles*, the most-favored-nation clause in the treaties between this country (Argentina) and Europe would be a bar to a plan specifically specifying concessions to a country.

Mr. Sherman, in his reply, voiced the extreme view of the conditional interpretation as follows:

The plenipotentiary (Mr. Kasson) is of opinion, and this department gives its sanction to the proposition, that the foregoing construction of the most-favored-nation clause is erroneous; that it (the clause) does not control the right of the nations adopting it to make exclusive compensatory agreements in just reciprocity with other nations.

The clauses referred to are expressed in various forms . . . ; but the intent is the same in all the conventions between civilized countries, whether the clause stands alone, or is qualified by the other customary clause excepting particular favors. That intent is to secure for the contracting party equality with all competing nations in the conditions of access to the markets of the other. . . .

It is clearly evident that the object sought in all the various forms of expression is equality of international treatment, protection against the wilful preference of the commercial interests of one nation over another. But the allowance of the same privileges and the same sacrifice of revenue duties, to a nation which makes no compensation, that had been conceded to another nation for an adequate compensation . . . destroys that equality of market privileges which the . . . clause was intended to secure. And it concedes for nothing to one friendly nation what the other countries secure only for a price. . . .

The neighborhood of nations, their border interests, their differ-

¹⁴ See p. 118, *infra*.

ence of climate, soil, and production, their respective capacity for manufacture, their widely different demands for consumption, the magnitude of the reciprocal markets, are so many conditions which require special treatment. No general tariff can satisfy such demands. . . .¹⁵

American Courts on the Conditional Interpretation

The construction placed by certain American statesmen on the most-favored-nation principle in commercial treaties has been reinforced by decisions of the United States Supreme Court, as will appear from the following examples:

In the case of *Bartram v. Robertson* (122 U. S. 121), Denmark claimed that, under its treaty of 1826 with the United States, Danish sugar should be admitted into the United States free of duty, *i.e.*, on the same terms as Hawaiian sugar under the reciprocity convention of 1875 between the United States and Hawaii. The Court held that "the treaty with Denmark does not bind the United States to extend to that country, without compensation, privileges which they have conceded to the Hawaiian Islands in exchange for valuable concessions. On the contrary, the treaty provides that like compensation shall be given for such special favors. When such compensation is made (by Denmark) it will be time to consider whether sugar from her dominions shall be admitted free from duty."

Whitney v. Robertson (124 U. S. 190, 1888) involved the same principle as the case just cited, the conditional form of the most-favored-nation clause being absent. The treaty of 1867 between the United States and the Dominican Republic provided that "no higher or other duty

¹⁵ United States Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 417. Note how exclusively national is this point of view.

shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of the Dominican Republic, or of her fisheries, than are or shall be payable on the like articles the growth, produce, or manufacture of any other foreign country or of its fisheries." The convention of 1875 with the Hawaiian Islands provided for the importation into the United States, free of duty, of various articles (among which were sugars), the produce and manufacture of those islands, in consideration of certain concessions made by the king of the Hawaiian Islands to the United States. It was held that this provision in the treaty with the Dominican Republic did not authorize the duty-free admission into the United States of similar sugars, the growth, produce, or manufacture of that republic, as a consequence of the agreement made with the king of the Hawaiian Islands, and that there was no distinction in principle between this case and *Bartram v. Robertson*, 122 U. S. 116.

The legalistic character of the reasons assigned by the statesmen and courts in support of the conditional interpretation is obvious, while the economic significance of the principle is lost sight of. The conditional most-favored-nation principle was adopted by American statesmen in an era of fierce discrimination and exclusion. Its purpose was to obtain equal treatment in commercial matters and, regarded historically, it seems to have been justified economically. Whether it is so justified under present world conditions requires further analysis.

Conditional Principle Generalizes Concessions Freely Made

In any analysis of the conditional most-favored-nation principles, there should be a grouping of cases. In the first place, this principle provides that concessions freely

and gratuitously made are generalized automatically and immediately. In this respect the conditional principle operates like the unconditional. The point is made clear by two cases in American history widely separated in time. John Jay, in a controversy in 1787 with the Netherlands over the treaty of 1782, stated, as pointed out above, the conditional interpretation. The text of that treaty did not make the usual distinction between gratuitous concessions and concessions made for a consideration, but Jay read this distinction into it. He then pointed out that the concessions in question—made by the State of Virginia in favor of France—were gratuitous and that the Netherlands were therefore entitled under the treaty to the same reductions.¹⁶

The second case arose under the Canadian reciprocity act of 1911. Section 2 of that act provided that wood pulp and newsprint paper should be free of duty on the condition precedent that no export tax or restriction be imposed upon the export of such products or upon pulp wood. Through Canada's failure to enact corresponding legislation, the reciprocity act never became effective, but the courts held, as regards section 2, that it was "wholly independent" of the reciprocity provisions of the act and therefore became effective. Importers of wood pulp and paper from Norway, Russia, Austria-Hungary, and Germany then claimed free entry for their products under the most-favored-nation clauses of our treaties with their countries. Their contention was sustained on the ground that the concessions to Canada, having been made freely and without compensation, were generalized by the most-favored-nation clauses of our commercial treaties.¹⁷

¹⁶ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1948, p. 417.

¹⁷ *American Express Co. v. United States*, 4 Court of Cust. Appeals, 146 (1913).

Wilful Discriminations

A gratuitous concession to one party, if not generalized, creates against another party whose treaty rights are thus impliedly violated a gratuitous or wilful discrimination. A nation may also place a higher duty or burden on the commerce of another and thus call into play the most-favored-nation clause. Secretary of State Sherman had this phase of the matter in mind when he said that the purpose of the most-favored-nation clause is to furnish "protection against the wilful preference of the commercial interests of one nation over another." A few cases upon this point, though obviously not in complete harmony, may be cited.

Countervailing Duties

American tariff laws now provide for additional or countervailing duties to be applied to any imported goods, the production or exportation of which has been aided, directly or indirectly, by a bounty. The controversy over these duties is closely associated with the sugar bounties granted in the nineties by European countries. In our tariff act of 1894 an additional duty of one-tenth of a cent per pound was imposed on sugar imported from a country paying a bounty on the exportation of such sugar. Germany protested that this provision was a violation of the treaty of May 1, 1828, between the United States and Prussia. Mr. Gresham, Secretary of State, held that bounties are domestic measures analogous to protective duties for the purpose of encouraging domestic manufacture. President Cleveland, in his annual message of December 3, 1894, recommended, "in the interests of the commerce of both countries and to avoid even the accusation of treaty violation,"¹⁸ the repeal of the countervailing duty provision.

¹⁸ See Moore's *Digest*, Vol. V, p. 306.

A different opinion, however, has prevailed. Countervailing duties applied to the importation of bounty-fed products are regarded as a justified type of anti-dumping legislation.¹⁹ Bounties may be a domestic matter so long as they are confined to the encouragement of industry at home; to this extent they are analogous to a protective tariff, but when they are used to nullify the effect of tariffs in foreign countries or to give domestic sugar an advantage in competition in a foreign market, the country whose products are injured may properly equalize the competitive situation by means of additional duties. In 1894, Mr. Olney, as Attorney General, pointed out that the "representatives of both Great Britain and Germany expressly declared, at the International Sugar Conference of 1888, that the export sugar bounty of one country might be counteracted by the import sugar duty of another without causing any discrimination which could be deemed a violation of 'the most-favored-nation clause.'"²⁰ Mr. Sherman, Secretary of State, relied on Mr. Olney's opinion when, in 1897, he denied that additional duties applied against bounty-fed products constitute a violation of the most-favored-nation clause. Opinion finally settled

¹⁹ See Viner, Jacob, *Dumping: A Problem in International Trade*. In reviewing this book, the present author wrote (*Journal of International Law*, April, 1924, p. 391):

"Dr. Viner devotes considerable space to arguing that bounty-countervailing duties are incompatible with the most-favored-nation guaranty in commercial treaties, but affirms that dumping duties are perhaps not incompatible with such pledges. Frankly, I cannot follow his refinements on this subject. The test is whether or not the foreign government or citizen can remove the bounty or other aid to exportation which leads to the imposition of the countervailing duty or the dumping duty. Dumping deliberately stimulated by government bounties would seem to me to be more in violation of the spirit of equality of treatment embodied in the most-favored-nation clause than cut-prices which may result from a legitimate business practice, i.e., from dumping . . ."

²⁰ See Moore's *Digest*, Vol. V, p. 306.

on the conclusion that the bounty "destroys the equality which it is the object of the most-favored-nation clause to establish."²¹

When countervailing duties against bounties were first discussed in Great Britain they were held to violate the most-favored-nation clause, but in 1894 countervailing duties were levied on bounty-fed sugar imported into India. Against this duty the Russian Government protested on the grounds (1) that no bounty, direct or indirect, was paid in that country on the exportation of sugar, and (2) that, even if such a bounty were paid, the imposition of a countervailing duty would infringe the most-favored-nation clause in the treaty between the two countries.

Lord Salisbury . . . replied that the Russian system, under which the excise duty on sugars is repaid in case of exportation, created an "artificial stimulus" which had the same effect as "a bounty of a more direct character," and that the same opinion was disclosed in the legislation of the United States and in the records of the then recent conference at Brussels. In this relation, Lord Salisbury maintained that it was the intention of the most-favored-nation clause "that goods shall enjoy equality of treatment, but not preferential advantages as compared with goods of the most-favored-nation"; and that, where an artificial preference was produced by the direct legislative act of a government which was a party to a most-favored-nation stipulation, the other government might "redress the balance of trade which has thus been artificially disturbed," the remedy being in the hands of the other government to discontinue the bounty or the legislative act producing the artificial stimulus.²²

Additional Duties and Depreciated Currencies

Countervailing duties against bounty-fed products may therefore be said not to be gratuitous or wilful discriminations under either the conditional or unconditional most-favored-nation clause. A country can obviously avoid the

²¹ See Moore's *Digest*, Vol. V, p. 282.

²² *Ibid.*, p. 307.

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assessment of countervailing duties upon its products by refraining from granting bounties on exportation. A measure, however, which does violate the most-favored-nation pledge is the application of additional duties to goods imported from a country whose currency is depreciated.

The British law for the prevention of dumping which lapsed August 19, 1924, was voluminous and complicated, but the most essential provision was that a duty of $33\frac{1}{3}$ per cent ad valorem may be imposed, on the order of the Board of Trade:

If . . . it appears to the Board that goods . . . are being sold . . . in the United Kingdom . . .

(b) at prices which, by reason of depreciation in the value in relation to sterling of the currency of the country in which the goods are manufactured, not being a country within His Majesty's Dominions, are below the prices at which similar goods can be profitably manufactured in the United Kingdom; . . . the Board may . . . by order apply this Part of this Act to goods of that class or description if manufactured in that country:²²

Among the restrictions upon the application of the duty were the provisions: that the depreciation should be not less than $33\frac{1}{3}$ per cent; that the importations should be such as seriously to affect (or threaten) unemployment in some efficient British industry; that the imposition of the duty should not unfavorably affect other industries; and that "no such order shall be made which is at variance with any treaty, convention or engagement with any foreign state in force for the time being."

Some time after the passage of this law it was announced that, because of treaty obligations, Germany, France and the fragments of the Austria-Hungarian Empire were the only countries against which the law could be applied.

²² Great Britain: *Safeguarding of Industries Act, 1921.*

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In other words, the British Government decided that the enforcement of the law would be contrary to the provisions of its most-favored-nation treaties.

When the American tariff act of 1922 was before the Finance Committee of the Senate it was proposed to levy on goods imported from any country whose currency was depreciated more than 70 per cent an additional duty of 1 per cent for each one per cent of depreciation in excess of the 70 per cent. A number of reasons were assigned for the rejection of this measure, among them being the belief of senators and government officials that the provision would violate certain of our commercial treaties.²⁴

It was argued in justification of this proposed law that the rule applied, being uniform, was not in violation of our treaties. If it had been enacted with no proviso saving the treaty rights of other countries, the question could not have been raised in the Supreme Court whether the statute conflicts with our treaties, since the courts will enforce the later legislation even though plainly contrary to the earlier treaties, *e.g.*, the Chinese Exclusion case.

If the proposed legislation had been enacted *with* the proviso saving the treaty rights of other countries, and if the Supreme Court had held that this legislation is not contrary, *e.g.*, to our treaties with Italy and Serbia, and that, consequently, the additional duties must be collected upon imports from those countries, the argument of uniform application would hardly have been accepted by those foreign states as an adequate justification for levying other or higher duties on their commerce. They would have regarded those duties as "wilful discriminations."

Even though the "uniformity" of the statute were

²⁴ Treaty with Greece, Dec. 22, 1837, Art. VIII; treaty with Italy, Feb. 26, 1871, Art. VI; and treaty with Serb-Croat-Slovene State, Oct. 14, 1881, Arts. VI, VII, IX, and XIII.

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admitted, the principle that a uniform statute does not violate most-favored-nation treaties was not accepted in international law and precedent. On at least two occasions the United States has demanded and obtained from Great Britain and Norway more favorable treatment than it had been receiving under "uniform" laws. Norway, for example, imposed tonnage duties according to the geographic zone from which the ship in question came. The United States lying in the most distant zone, ships from its ports were charged the highest rates until it successfully insisted that, under the treaty of 1827, these ships were entitled to a rate as low as that paid by any other ships.

American Government's Use of the Rule of Uniformity

An American statute of 1884 provided that tonnage duties should be levied upon vessels coming from ports of the American continent at lower rates than from other ports. The act applied uniformly to vessels of all nationalities; but Belgium, Denmark, Germany, Italy, Portugal and Sweden-Norway rejected it as incompatible with their most-favored-nation treaties. It was pointed out that the statute was uniform, but the German Minister regarded the claim that this justified the statute as "a most unusual one" and "calculated to render the most-favored-nation clause wholly illusory."²⁵ Further legislation was passed in 1886 and the controversy continued for many years.

The argument that the rule is uniform has been pleaded to justify discriminations which violate our treaties. In the tariff act of 1890 (sec. 3) the President was authorized to penalize certain products imported from countries whose tariff on American products he regarded as "reciprocally unequal and unreasonable." It should be noted that the penalties were directed not against discriminatory

²⁵ See Moore's *Digest*, Vol. V, p. 290.

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practices, but against duties which were applied equally to all countries but which the President deemed too high. Also, the penalties were very different in their purpose from countervailing duties. Countervailing duties, like anti-dumping duties, are devised for the purpose of protecting industry within the country from a form of unfair competition originating in a foreign country; but the penalty duties in section 3 of the act of 1890 were designed to force down the level of duties in foreign countries in the interests of our export trade. This difference in purpose has an intimate bearing on the application of the most-favored-nation clause to each case. In the operation of this law countries may be classed as follows:

(a) Those which, under the threat of the penalty duties, lowered their duties and obtained a pledge of exemption from the penalties.

(b) Those which refused to lower their duties and to whose commerce the penalties were applied.

(c) Those with whose tariffs the President was satisfied, and to whose commerce the penalties were not applied.

Under class (b) fell Colombia, Venezuela, and Haiti. Colombia protested that the application of the penalty duties to her commerce was in violation of the most-favored-nation clause in her treaty of 1846 with the United States, Article II of which is in the usual conditional form. Mr. Blaine, Secretary of State, asserted that the law applied "the same treatment to all countries whose tariffs are found by the President to be unequal and unreasonable."²⁶

It may be said with some confidence that Colombia's

²⁶ See Moore's *Digest*, Vol. V, p. 304.

protest was well grounded. It is true that as countries under class (a), cited above, received the benefits of the minimum rates in the American tariff only after granting what were accepted as corresponding concessions, it might be argued that if these were the only countries involved Colombia also should grant a compensation to obtain favors granted to others. But, as against this, the countries falling under class (c), *e.g.*, Argentina, received gratuitously the minimum American tariff rates, and this concession having been made freely, Colombia would seem to have been entitled under the treaty to "enjoy the same freely." This is an excellent example of a wilful discrimination in violation of the conditional interpretation of the most-favored-nation clause.

Penalty Provisos in Violation of Most-Favored-Nation Principle

The principle of the McKinley penalty provision, *viz.*, the use of additional duties to force the reduction of foreign duties which, while not discriminatory, are too high to suit American exporting interests, has appeared in our laws in various other forms.²⁷ In all the general tariff acts, beginning with the act of 1894, provisos have been attached to particular paragraphs making the duty imposed on a given article, or its duty-free admission from any country, dependent on the tariff treatment of the same article in that country. The act of 1894, for example, transferred salt to the free list, but it provided that the old duty should continue to be levied on salt imported from any country which did not admit American salt free. Similarly, in the act of 1897, petroleum was placed on the free list, but if imported from any country which levied a duty on American petroleum, a duty of like amount was

²⁷ See Chap. iv, p. 114, *infra*.

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to be levied on petroleum of that country imported into the United States.²⁸

Only the most-favored-nation aspect of these provisos will here be considered. They require, without any negotiation with foreign countries, the imposition of "other and higher" duties on the importation of the specified products from countries imposing duties on those products than on like importation from countries to which such products are admitted free. The free admission of products from the latter countries is gratuitous, not the result of negotiations. Our penalties on the products of countries which, for domestic reasons, wish to place a duty on said products (which we, also for domestic reasons, place on the free list) are wilful discriminations. Under the tariff act of 1894 salt from certain countries, *e.g.*, Great Britain, was admitted duty free. We had no negotiations with these countries, and they made no concessions. We made salt free as a matter of domestic policy, and foreign countries admitting American salt free granted the same privilege to all other countries. No escape seems possible from the conclusion that to penalize salt from a country merely because its laws provide for a duty on salt from *all* countries, including the United States, is a discrimination prohibited by every form of the most-favored-nation clause. The proviso amounts to asking the foreign country to give American salt a special preference in its markets in return for equal treatment of its salt in ours, and the only escape from this situation is for that country to admit all salt free.

The contrary, however, has been urged. It has been said that these provisos are an offer of reciprocity and fall within the "compensation" or "equivalent" provisions

²⁸ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 434. For other cases and a discussion of the economic aspect of the problem, see Chap. iv, p. 115, *infra*.

of the conditional most-favored-nation clause. Mr. Olney states this position in discussing the salt proviso of 1894:

The form which the provisions of our recent tariff act relating to salt may have assumed is quite immaterial. It enacts, in substance and effect, that any country admitting American salt free shall have its own salt admitted free here, while any country putting a duty upon American salt shall have its salt dutiable here under the preëxisting statute. In other words, the United States concedes "free salt" to any nation which concedes "free salt" to the United States. Germany, of course, is entitled to that concession upon returning the same equivalent. But otherwise she is not so entitled, and there is nothing in the "most-favored-nation clause" which compels the United States to discriminate against other nations and in favor of Germany by granting gratuitously to the latter privileges which it grants to the former only upon the payment of a stipulated price.²⁹

This position cannot be considered as accepted even in the United States. Provisos of a similar character were stricken from the earlier drafts of the tariff act of 1922 because they violated our treaties, but some of them were later enacted.³⁰ It may be said that if the Olney interpretation should prevail, it would furnish an added argument for the abandonment of the conditional form and interpretation of the most-favored-nation clause.

What Constitutes an Equivalent Concession?

It is the *application* of the principle that is chiefly at fault in Mr. Olney's argument. The conditional most-favored-nation clause in the case of gratuitous concessions operates just as does the unconditional most-favored-nation clause—it generalizes them automatically and immediately. The difference in form and interpretation arises when concessions are made upon the condition that a compensating concession be granted. Under the uncondi-

²⁹ See Moore's *Digest*, Vol. V, p. 274.

³⁰ Chap. iv, p. 116, *infra*.

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tional interpretation such concessions also are automatically and immediately generalized; under the conditional interpretation they are granted to a third nation only in return for an equivalent concession.

An obvious difficulty that arises is: What is an equivalent? How is it to be determined? In the words of Henry Clay, in order to ascertain the *quantum* of favor which might be claimed in virtue of a stipulation embracing that rule, it is necessary that the claimant "should be accurately informed of the actual state of the commercial relations between the nation on which the claim of equal favor is preferred and all the rest of the commercial world;" and, with this information acquired, it is "*not always very easy to distinguish between what was a voluntary grant and that which was a concession by one party for an equivalent yielded by the other.*" Sometimes the equivalent for the alleged favor might be diffused through all the stipulations of the treaty, and sometimes might not even be clearly deducible from it. From some or all of these causes it happens that in the practical application of the conditional form of the most favored nation perplexing and embarrassing discussions arise.³¹

This aspect of the most-favored-nation clause is, however, not theoretical, and the determination of the equivalent is not impossible, although it presents difficulties which make it generally impractical in international negotiations. The United States, in 1832, admitted the necessity of granting Colombia an equivalent in order that our commerce might benefit by certain concessions granted to Central America. On that occasion, the United States Government agreed to Colombia's conditional interpretation of the most-favored-nation clause in the treaty of 1824. Article II of that treaty provides for most-

³¹ See Moore's *Digest*, Vol. V, p. 311.

favored-nation treatment, freely if the concession is freely made, or for the same compensation if conditional. Subsequently, it was provided by a treaty between Colombia and Central America that discriminating duties should, to a certain extent, be abolished. Thereupon the American minister to Bogotá demanded the extension of the benefits of the treaty to vessels of the United States. The Colombian Government "justly and naturally answered that the privilege given to Central America . . . was conceded on the condition of a reciprocal advantage, and that . . . we could not claim to enjoy it without granting a reciprocal privilege to Colombian vessels in our ports." The justice of this contention was so apparent that the American minister at once concluded a reciprocal arrangement by which, in conformity with the provisions of the arrangement between Colombia and Central America, vessels of the United States and their cargoes, which should "go direct" from ports of the United States, were to pay no higher or other duties than Colombian vessels.³²

The *right* (if it be a right) of a nation to offer an equivalent in order to obtain a concession made by a second to a third nation is perhaps clearer when the first nation is pursuing a *general reciprocity policy under a uniform, general statute*. Concessions thus made fall within this phase of the most-favored-nation clause. For example, under section 3 of the act of 1897 two series of reciprocity treaties, known as the Argol treaties,³³ were negotiated. The statute was general, and it may be said that nations enjoying conditional most-favored-nation treatment with the United States had a *right* to claim the privilege of offering an equivalent in return for such concessions as were granted under this section to third countries.

³² See Moore's *Digest*, Vol. V, p. 260.

³³ See p. 118, *infra*.

Exclusive Reciprocity Treaties

Apparently, however, the right to negotiate for concessions granted for a compensation is not absolute in the commercial policy of the advocates of bargaining for exclusive privileges. It is only on this assumption that certain declarations by American statesmen can be rendered consistent with other complexities of the conditional most-favored-nation clause. The United States is or has been a party to special reciprocity treaties based on geographical and political considerations. In the case of our treaties with Hawaii (1875-1898) and with Cuba (1903-) the United States has not only refused to accept equivalents from other nations in return for concessions granted these countries in our market, but it has refused to allow them to generalize the concessions which they made the United States. Under her treaty of 1851 with Hawaii Great Britain was, from her point of view, entitled to the concessions granted the United States, but we refused to let Hawaii yield.³⁴ In our treaty with Cuba it is stipulated that the concessions shall not be granted to any other country. "Propinquity and neighborliness," it has been said, "may create special and peculiar terms of intercourse not equally open to all the world."³⁵ Mr. Frelinghuysen, in reply to Mexico in 1884, entered "a courteous denial that the most-favored-nation clause applies to reciprocity treaties."

Again, in 1895, Mr. Adee, Acting Secretary of State, replying to the Russian chargé d'affaires at Washington, took occasion to make the following statement:

The exceptional advantages granted to the Hawaiian Islands by the tariff laws of the United States, in conformity with the provisions of the reciprocity treaty with Hawaii, have been

³⁴ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 418.

³⁵ See Moore's *Digest*, Vol. V, pp. 267, 273.

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yielded to that government in return for certain valuable and exclusive considerations, and by reason of the peculiar geographical and commercial relations that exist between the two countries. The course of this government has been consistent in holding that such privileges do not fall within the favored-nation clause of any treaty, the concessions which the United States have extended to these islands having been made for considerations of such a character as not to be included within the stipulations for most-favored treatment contained in the treaties with other powers. From the early days of this government it has been held that a covenant to extend to the most-favored-nation privileges otherwise granted only refers to gratuitous advantages, and does not cover those granted on condition of a reciprocal benefit. . . .⁶⁶

Probably the extreme in this particular phase of the subject was reached in the attempt in our treaty of 1886 with Tonga to read a special interpretation into international law. The article providing for most-favored-nation treatment contained the following clause:

. . . it being understood that the Parties hereto affirm the principle of the law of nations that no privilege granted for equivalent or on account of propinquity or other special conditions come under the stipulations herein contained as to favored nations.⁶⁷

This analysis of the conditional interpretation of the most-favored-nation principle has disclosed serious difficulties in practice. The objective for which such a principle exists at all has been at times lost sight of, and complexities have resulted which have impeded rather than aided commerce. The object of commercial negotiations should be stability for commerce and fair and equal treatment. If the conditional principle has not produced this result in practice, it is proper to inquire what alternatives are avail-

⁶⁶ See Moore's *Digest*, Vol. V, pp. 276, 277. The author cannot help feeling that the rule was overstated.

⁶⁷ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, pp. 419, 420.

able. One such is the unconditional form and interpretation of the principle.

Unconditional Interpretation of the Most-Favored-Nation Principle

The leading exponent of the unconditional interpretation of the most-favored-nation clause has been Great Britain. Because of her world-wide commerce, her prominent participation in international affairs, and the unconditional and undiscriminatory most-favored-nation treatment consistently accorded by her commercial treaties to other countries, the example of England has had great weight, and has tended strongly toward equality of treatment of all nations in regard to tariff duties and commercial practices generally. England's conception of the purpose and meaning of the most-favored-nation clause may therefore be taken as typical of the unconditional interpretation.

Great Britain has employed the unconditional form of the clause with probably fewer exceptions than any other State, and has stood more prominently than any other for the application of the unconditional interpretation. Early British treaties stipulated merely for "reciprocal liberty of commerce," but in the eighteenth century the most-favored-nation clause in British treaties was invariably in the unconditional form, and this prevails in England's commercial treaties at the present day.

As regards construction, the British view (which is substantially also the European view) that most-favored-nation treatment should be unconditional has been maintained by British statesmen, at least since 1860, as consistently as the opposite interpretation was upheld by the United States until 1922. The European position is brought out in the following citations from the diplomatic

correspondence between the United States and Great Britain.

On December 4, 1884, Secretary of State Frelinghuysen submitted to the British Minister at Washington a project for commercial reciprocity between the United States and the British West Indies. Article XIII of this project contained the following stipulation:

The Contracting Parties, however, mutually agree that the conditional privileges which this convention expressly reserves and confines to the goods and vessels of the respective countries under the national flags are not, under the operation of favored-nation clauses in existing treaties which either of them may have concluded with other countries, to be deemed as extending to the goods or vessels of such other countries without equivalent consideration on the part of such other countries; . . .

Referring to this clause in the proposed reciprocity agreement, Earl Granville, Secretary of State for Foreign Affairs, in the course of his instructions to the British Minister at Washington, February 12, 1885, took occasion to express his view of the correct construction of the most-favored-nation clause in accordance with British practice:

Article XIII expressly provides that the privileges conceded by the treaty are not to be granted by either party to other nations by reason of the most-favored-nation clause existing in any treaty with such nations, unless any such nation give what, in the opinion of the other party, is an equivalent. But Her Majesty's government are decidedly of opinion that the exception to most-favored-nation treatment thus contemplated would be an infraction of the most-favored-nation clause as hitherto interpreted in the law of nations. . . .

The interpretation of the most-favored-nation clause involved in the United States' proposals is, that concessions granted conditionally and for a consideration can not be claimed under it. From this interpretation Her Majesty's government entirely and emphatically dissent. The most-favored-nation clause has now become the most valuable part of the system of commercial treaties, and exists between nearly all the nations of the earth.

It leads more than any other stipulation to simplicity of tariffs and to ever increased freedom of trade; while the system now proposed would lead countries to seek exclusive markets and would thus fetter instead of liberating trade. Its effect has been, with few exceptions, that any given article is taxed in each country at practically one rate only. . . .

It is, moreover, obvious that the interpretation now put forward would nullify the most-favored-nation clause; for any country, say, France, though bound by the most-favored-nation clause in her treaty with Belgium, might make treaties with any other country involving reductions of duty on both sides, and, by the mere insertion of a statement that these reductions were granted reciprocally and for a consideration, might yet refuse to grant them to Belgium unless the latter granted what France might consider an equivalent. . . .⁸⁸

Advantages of the Unconditional Principle

The unconditional most-favored-nation principle may be adopted as advantageously by a country with a protective tariff as by a country with free trade. Like the analogous policy, the "open door," it does not imply the absence of tariffs but the absence of discrimination in whatever tariffs or other commercial measures a nation may see fit to adopt. It does avoid many of the complexities which are the necessary accompaniment of the conditional most-favored-nation principle, and thereby it contributes to simplicity in customs administration. By automatically generalizing any concession made by one nation to another, that is, by extending that concession or favor to all other countries entitled to most-favored-nation treatment, it makes unnecessary continual tariff bargaining with different countries by separate negotiations and agreements, and assures each competing country that it will not subsequently, during the life of the treaty, be placed in a less favorable position in competition with third countries than at the time when the treaty was made.

⁸⁸ See Moore's *Digest*, Vol. V, pp. 269-271.

This added security against discriminatory treatment as between rival nations means greater stability in commercial policies and increasing uniformity in commercial practice throughout the world. If international negotiations be viewed from a purely nationalistic point of view, the generalization of all concessions without bargaining with every country that may benefit may seem unwise, but when negotiations are conducted with the unconditional principle in mind profit and loss will, in the long run, balance each other. The most that any nation is entitled to in international dealings is equality of treatment, and it is better to obtain it by adhering to and applying the principle generally than by a series of petty bargains.

The unconditional principle has been an active factor in the operation of the multiple tariff systems of certain countries of Continental Europe.³⁹ Both the maximum and minimum type, as in France, and the general and conventional type, as in Germany, employed before 1914 the unconditional most-favored-nation principle to generalize the lowest (*i.e.*, the minimum of the treaty) rates to which one country becomes entitled. But France and Spain since the war have tried to avoid generalizing, and France has half a dozen different rates on some articles.⁴⁰

Equality of Treatment Defeated by Concealed Discriminations

The effectiveness of unconditional treatment is qualified by a number of devices. The mere adoption of a principle is not sufficient. Nominal equality of treatment may cover up discrimination in fact. European bargaining has

³⁹ But for a post-war criticism of the principle see article by M. Serruys in *La Revue Contemporaine*, Mar. 1, 1923.

⁴⁰ For a discussion of the tariff systems of Continental Europe see, U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, pp. 461-509. For criticism of multiple systems as a method of bargaining see Chap. iv, pp. 135-139, *infra*.

demonstrated the need of effective means of preventing evasion of guaranties of equality of treatment by sanitary and customs regulations and classifications. Two illustrations will suffice to make clear the problem. The first example is the prohibition of the importation of American pork products into Germany, officially on sanitary grounds but in fact, as a means of protecting the German agrarians.⁴¹ A prolonged controversy between the two governments ensued and it was not until the United States enacted a measure under which it might retaliate that the Saratoga Convention (1891) was negotiated and the dispute adjusted. The second is the tendency towards specialization in classification, tending to defeat the effectiveness of the unconditional most-favored-nation clause in the establishment of commercial equality. Refinement in classification probably reached a climax in the German tariff of 1902. Item No. 103 of Germany's conventional tariff, for example, accords a special rate to "large dappled mountain cattle or brown cattle, reared at a spot at least 300 meters above sea level, and which have at least one month's grazing each year at a spot at least 800 meters above sea level."⁴² The special rate established on this limited classification could be granted, say, to Switzerland in order that the southern Germans might obtain Swiss cattle by the payment of a moderate tariff duty, but it excluded from importation cattle, for example, from Russia and Holland which might compete with the agrarian interests of Germany.

Exceptions to Most-Favored-Nation Pledge

Before considering the present problem of the United States with respect to the most-favored-nation principle

⁴¹ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 424.

⁴² *Ibid.*, p. 483.

the scope of the principle may be defined by an enumeration of several exceptions which are allowed in treaty practice. These exceptions are not cited in this connection with approval but merely as existing practices. Progress in international practice will further limit the field of exceptions.

That geographic propinquity may properly be considered as a ground for exceptional treatment was admitted by Great Britain in the course of negotiations with the United States resulting in the Canadian reciprocity treaty of 1854.⁴³

As regards the special relations between colonies and the mother country, these are recognized expressly in numerous commercial treaties of colonial powers. The most significant example of such special relations is supplied by that world-wide federation of states—the British Empire. To safeguard, and as far as possible harmonize, the many conflicting interests of the different portions of that “far-flung Empire,” a simple, flexible and, therefore, effective formula has been developed, which is incorporated in all recent treaties of Great Britain with other countries.⁴⁴ This provides:

(a) That the stipulations of the treaty shall not be applicable to British colonies, possessions or protectorates beyond the seas, unless notice to that effect is given by the mother country within a stated time;

(b) That, nevertheless, the products of any British colony, possession or protectorate shall be entitled to complete and unconditional most-favored-nation treatment in the treaty countries, so long as the products of those countries are treated by such colony, pos-

⁴³ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1903, p. 414.

⁴⁴ See also treaty resolution at Imperial Conference of 1923, Chap. v, *infra*.

session or protectorate as favorably as the products of any other foreign country; and

(c) That any British colony, possession or protectorate which may have acceded to the treaty may withdraw therefrom separately, after specified notice to that effect from the mother country.

As a means of reconciling the divergent or conflicting interests of the various portions of so heterogeneous an aggregation as the British Empire (with products, industries and commercial interests as diverse as the climates and peoples embraced in this world-wide federation), this formula is an exceedingly clever product of statecraft. By means of this simple and flexible arrangement, local autonomy is assured to each component part of the Empire. If the treaty in question serves, or at least does not injure, the special interests of any British country or colony, then that country may accede to the treaty; and if through unforeseen subsequent developments the treaty should prove disadvantageous in any respect to certain colonies or Dominions, then these may withdraw separately upon proper notice, without disturbing the operation of the treaty as between the other parties thereto.

Among the exceptions to most-favored-nation treatment expressly stipulated in numerous commercial treaties, in which geographical propinquity and special colonial relations are recognized as grounds for exceptional treatment, the following examples may be cited.⁴⁵ Treaties provide expressly that the most-favored-nation treatment therein guaranteed shall not be held to apply to:

(a) Any favors, advantages, or tariff concessions which either party to the treaty may grant to adjoi-

⁴⁵ U. S. Tariff Commission: *Handbook of Commercial Treaties, 1922*.

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ing states to facilitate frontier traffic within a limited zone on either side of the boundary.

(b) Special tariff favors granted with reference to fish and other aquatic products taken in contiguous foreign waters.

(c) The former treaties of Russia provided that the most-favored-nation pledge should not apply to Russian commerce with Asiatic states and countries bordering on Russia, or to favors concerning importation or exportation which Russia might accord to residents of the Province of Archangel, or concerning the north and east coasts of Siberia.

(d) Treaties of Central American states often stipulate that the most-favored-nation pledge shall not apply to special concessions which may be accorded to other Central American Republics.

(e) The treaties of Portugal generally provide that the most-favored-nation pledge shall give no claim to any special favors which Portugal may accord to Spain or Brazil.

Adoption of Unconditional Principle by the United States Government

A survey of the most-favored-nation principle and practice is not only essential in any study of international economic relations, but in the United States, is particularly relevant at this time. An important change is taking place. Beginning under the leadership of Mr. Hughes, when Secretary of State, the United States adopted the unconditional form of the most-favored-nation clause in its commercial practice. This does not necessarily mean a reversal of the conditional interpretation which has been upheld by our statesmen and courts. Those precedents will no doubt be controlling in the future if and when an *indefinite form* of the most-favored-nation clause comes up

for construction. But an affirmative policy is being written into our treaties which expresses a fundamental change in our commercial policy.

The first public evidence of this new policy appeared in the exchange of notes with Brazil dated October 18, 1923. In these notes the two countries agreed to accord to each other "unconditional most-favored-nation treatment."⁴⁶

"It should also be observed," Mr. Hughes said,⁴⁷ "that in our commercial relations the United States is seeking unconditional most-favored-nation treatment in customs matters." The Brazilian arrangement is typical of Mr. Hughes' broad, sound approach to commercial questions.

It may be admitted that exclusive preferences on a number of articles in the Brazilian tariff would benefit certain exporting minorities in the United States.⁴⁸ If commercial bargaining is to be regarded from this narrow point of view, and if there is nothing more in it, the use of our economic power to obtain such special concessions as those which we held for years in Brazil may be justified. National commercial policy, however, has a larger purpose and it was this purpose which led the United States Government to refrain from requesting on January 1, 1923, a renewal of our special position in the Brazilian market. This conduct led to a better feeling toward the United States, and the generous attitude assumed is bound to be profitable to American commercial interests. The fairness of a policy which offers and seeks equality of treatment must, in the long run, appeal to all nations and result favorably to its author.

⁴⁶ See Chap. iv, p. 112, *infra*.

⁴⁷ Address at Philadelphia, Nov. 30, 1923, p. 14.

⁴⁸ It was authoritatively stated in April, 1924, that up to that time at least American exports of flour to Brazil had not been decreased by the withdrawal of the tariff preferential.

• *A Model for Our New Commercial Treaties*

The commercial treaty negotiated with Germany and ratified on February 10, 1925, when before the Committee on Foreign Relations of the United States Senate⁴⁸ was declared to be a model for subsequent commercial treaties. The phraseology of the most-favored-nation section is, therefore, significant. It reads: .

Each of the high contracting parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce, or manufacture of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce, or manufacture of any other foreign country.

Each of the high contracting parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other high contracting party than are imposed on goods exported to any other foreign country.

Any advantage of whatsoever kind which either high contracting party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce, or manufacture of the other high contracting party.

* * *

With respect to the amount and collection of duties on imports and exports of every kind, each of the two high contracting parties binds itself to give to the nationals, vessels, and goods of the other the advantage of every favor, privilege, or immunity which it shall have accorded to the nationals, vessels, and goods of a third State, and regardless of whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege, or immunity which shall hereafter be granted the nationals, vessels, or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended

⁴⁸ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany," Feb. 7, 1924, Pt. 3, pp. 70, 71.*

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to the other high contracting party for the benefit of itself, its nationals, and vessels.

Referring to this new policy, Mr. Hughes, in his letter of March 13, 1924, to Senator Lodge, wrote:⁵⁰

. . . As the United States attained to a position of first rank as a world power, we, in defense of our essential interests, became an active champion, in fact the foremost champion of the principle of the "open door" in the field of international commercial relations. To be consistent with our professions, and to conserve our interests it has become important that we make our commercial practice square in fact with the theory upon which our policy has been based. This explains the reason why, having examined with most minute care the history of the application of our conditional most-favored-nation principle, the Administration decided to abandon this practice and in its place to adopt the practice of unconditional most-favored-nation treatment. After the matter had been presented to President Harding he wrote me as follows on February 27, 1923: "I am well convinced that the adoption of unconditional favored-nation policy is the simpler way to maintain our tariff policy in accordance with the recently-enacted law and is probably the surer way of effectively extending our trade abroad. If you are strongly of this opinion, you may proceed with your negotiations upon the unconditional policy."

What an Analysis of the History of Our Conditional Policy Discloses

The reasons, especially the economic reasons, for this new policy are further clarified by analysis of the experience of the United States with commercial negotiations.⁵¹

Our traditional most-favored-nation policy dates from 1778. It was based upon the idea that treaty bargaining

⁵⁰ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany,"* Mar. 7 and 11, 1924, Pt. 6, pp. 306, 307.

⁵¹ For an excellent study of America's present commercial policy the reader is referred to McClure, Wallace: *A New American Commercial Policy, 1924*, Columbia University Studies in Political Science, Vol. CXIV, No. 2.

concerns primarily only the contracting states and that a tariff-rate reduction, made upon the "condition" that certain reductions be made by the other party, is not to be granted to any third power unless that power gives an "equivalent" concession. This "conditional" interpretation of the most-favored-nation principle extends to country *B* the concessions granted by us for a consideration to country *A* only if country *B* makes concessions to us equivalent to those made by country *A*. At first glance this principle seems eminently fair. It has the appearance of equality and was adopted with the idea that it offered, if not equality of treatment, at least the opportunity to secure it on a reasonable basis. It was inaugurated at a time when tariff rates were of minor importance as compared with the right to trade at all and the right of equal treatment for national vessels. In those days trading and navigation rights were bargained for as entities without too close an examination of the question whether the rights exchanged were not perhaps somewhat more valuable to the one than to the other country. But the old navigation laws are now a thing of the past, and international commercial policies are largely dominated by tariff rates and regulations. Most of the European powers have two-column tariffs, and, except in a few cases, tariff negotiations have developed into statistical controversies over the relative value of the concessions to be made. This has rendered it almost impossible to arrive at any agreement upon the equivalent concessions to be made by the third party. In practice, therefore, the conditional interpretation of the most-favored-nation clause has broken down. In some cases the United States has taken the extreme position of asserting that the third country could not offer any equivalent concession, because the value of the original concession consisted in its being exclusive. Our traditional most-favored-nation policy, therefore, which may

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once have been justifiable and effective, has become sterile, or in so far as it is effective its results are quite different from those originally sought. Instead of contributing to equality of commercial opportunity among nations, it has become the support of discriminatory reciprocity treaties.

Such Liberal Commercial Treatment as We Have Received Not Due to Treaty Policy

We have, it is true, received most-favored-nation treatment in most of the countries which have double-column tariffs. We owe this almost exclusively, however, to causes other than our conditional most-favored-nation policy. We owe it to our political importance, to certain old treaties of long standing, and to the interpretation of these treaties by other powers as granting to us, unconditionally, concessions to which most-favored-nations are entitled, to the predominance, until very recently, of unmanufactured articles in our export trade, and finally, to our established policy of a single tariff schedule applicable impartially to all countries. The benefit, in so far as we have benefited by most-favored-nation treatment in foreign countries, has therefore not been due to the conditional most-favored-nation pledges in our commercial treaties, but has resulted from the quiescence of such a principle in our tariff policy, and from the fact that other nations have not applied the logic of our position to our trade.

Active Commercial Policy Needed

The conditional most-favored-nation principle affords us no security against discriminations in foreign countries, and in the present period of reconstruction, when many countries are revising their treaties and reconsidering their grants of most-favored-nation treatment, the conditional most-favored-nation principle is liable to be applied against

us, as it has been on one or two occasions in the past. Moreover, since 1914 our interest in the commercial policies of other nations has increased. Our export trade has grown in volume and variety. We have become more and more dependent on foreign sources of raw material. The volume of our foreign investments has expanded. Our selfish national interest, therefore, indicates this as the time to adopt an active policy to safeguard our interests in markets and in sources of raw material in foreign countries. This active policy, as contrasted with our passive and negative attitude in the past, should consist of a frank abandonment of the conditional most-favored-nation policy and the adoption of a program of revising and completing our commercial treaties on the basis of the unconditional most-favored-nation principle, that is, the principle of embodying in commercial treaties reciprocal pledges that concessions made by either party to a third power shall immediately and automatically extend to the other party to the treaty.

Congress Endorses Principle of Equality of Treatment

Such a policy is clearly in line with section 317 of the tariff act of 1922 which empowers the President to make effective the principle of equality of treatment in our foreign trade relations. In the words of the conferees, who gave final shape to this act:

. . . The United States offers under its tariff, equality of treatment to all nations, and at the same time insists that foreign nations grant to our external commerce equality of treatment.¹²

Manifestly, this equality-of-treatment policy is entirely in line with America's well-known attitude toward the "open door" in certain far-eastern countries and in man-

¹² *Conference Report No. 1207, House of Representatives, 67th Cong., 2d Sess., p. 146.*

dated areas, a policy which has been generally recognized as a distinct contribution to commercial stability and to peace. Indeed, the principle underlying these policies is one and the same, for the term "open door," as used in international politics, means simply equality of treatment in trade for all nations, as opposed to discriminations in favor of one or more nations.

The more carefully one examines the principle of the open door, the clearer does it become that the problem is one which relates not merely to a few countries whose treaties bind them to collect no import duties in excess of 3, 5, 10 or 11 per cent ad valorem, not merely to economically backward countries and undeveloped colonies, but also to the markets of the great industrial powers themselves. No really satisfactory international relations, no assured peace, can be established until all countries feel secure in the guaranty of equality of treatment in all the important markets of the world. Even before 1914 many of the European nations had made considerable progress toward this goal—a progress which may be attributed to the adoption of the unconditional most-favored-nation principle in commercial treaties.

Now that Congress has taken a definite stand for the policy of equality of treatment, it would seem to follow logically that in the revision of our commercial treaties we should adopt the unconditional form of the most-favored-nation clause. We shall thereby establish a treaty basis on which to insist upon equality of treatment for our citizens and for our products in foreign markets. The unconditional form of the most-favored-nation clause is the simplest application to commercial intercourse of the equality-of-treatment principle and tends powerfully to obviate discriminations against third countries and to prevent the ill-feeling, distrust, retaliation, and international friction incidental thereto.

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Conditional Principle No Value to Our Economic Development

Whatever the merits of our conditional most-favored-nation practice may have been in days gone by, it is of no value under the present economic conditions of the world and under the tariff policy adopted by Congress. It even has serious disadvantages, among which may be mentioned the following:

1. In order to be effective the conditional most-favored-nation clause implies an active policy of tariff bargaining. Insofar as the conditional principle is logically followed out, we become entitled to the concessions which other powers grant to each other only after we negotiate and make concessions in return. Congress has rejected a policy providing "for special negotiations whereby exclusive concessions may be given in the American tariff in return for special concessions from foreign countries."⁵³ Congress does not favor agreements which involve reductions in protective rates on one or both sides and which, when brought before the Senate for ratification, result in prolonged debate in which all the issues involved in tariff legislation are necessarily reopened. The unavoidable delay of final action incident to this procedure is likely to render this method of tariff negotiations wholly ineffective. Tariff bargaining with other nations for concessions is at best complicated and dilatory and seldom, if ever, produces results commensurate with the irritation which it engenders among excluded nations.

2. An effective pursuit of the conditional most-favored-nation policy is practically certain to result in rates of duty upon the same article differing with the country of origin. Such a complication of tariff rates is expensive

⁵³ *Conference Report No. 1207*, House of Representatives, 67th Cong., 2d Sess., p. 146.

to administer, easily lends itself to fraud, and involves the risk of discriminations against certain countries in favor of others.

3. Under the tariff of 1922 the President is authorized to impose additional duties on the whole or on any part of the commerce of any country which discriminates in any manner against American commerce.⁵⁴ Consistency, therefore, requires that we do not ourselves initiate discriminatory rates. But so long as the conditional most-favored-nation principle dominates our commercial negotiations we cannot pursue an active policy without introducing discrimination into our tariff schedules.

Equality of Treatment Contributes to Stability and Good Will

Quite different is the general effect of the unconditional form of the most-favored-nation principle upon international commercial relations. For example, under the unconditional form, when country *X* has pledged most-favored-nation treatment in its treaties with other countries (as the United States has done in the commercial treaty with Germany, ratified February 10, 1925), a new concession made in a later treaty by country *X* to country *Z* is automatically and immediately extended to all the nations having most-favored-nation treaties with country *X*. The result is to assure each such country that so long as its treaty stipulations are honestly carried out its commerce with treaty countries will not be placed at a disadvantage. Thus, when all countries shall have followed the unconditional most-favored-nation practice, equality of treatment will be guaranteed generally and tendencies will be set in motion contributing to commercial stability, simplicity, and uniformity of tariff rates, mutual confidence, and international good will.

⁵⁴ Section 317. Appendix I.

CHAPTER IV

PRINCIPLES AND METHODS OF TARIFF BARGAINING

. . . What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The programme of the world's peace, therefore, is our programme; and that programme, the only possible programme, as we see it, is this:

. . .
III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance. (Address by Woodrow Wilson, January 8, 1918.)

No Settled Policy of Tariff Negotiations

The tariff treaty experiences of the United States are not only of interest as economic history but are of service in determining the wise course in commercial policy. They indicate practices to be avoided and the necessary limitations which surround commercial negotiations between nations. In the United States we have followed no consistent policy and for this reason our experiences are especially instructive.

The comparative isolation of the United States has been not only geographical and intellectual but commer-

cial as well. From the time when the American colonies shook off their political and industrial dependence upon Europe, established their own government and began to encourage their own manufactures, down to the beginning of the World War, foreign commerce probably played a smaller part in the business life of this country than was the case in any important country in the European system. Our international trade was very small compared with our domestic production, and what we did sell we did not actively export, but passively allowed others to come and buy. In these circumstances the tariff barriers of other countries were of relatively little importance to us. We were devoting our capital and our energy to the development of the resources of a vast continent; the primary emphasis in our tariff legislation, as in so much else, was upon the development of our industries, *i.e.*, upon what may be called the domestic aspect of the tariff as distinguished from its foreign or international aspect. The reaction of our tariff policy upon other countries and the effects of their commercial policies (except their navigation laws) upon us were matters of secondary interest. This was especially true in the middle of the last century, when the tendency in Europe was toward free trade and simple uniform tariffs. Our attitude, however, changed but slowly even after the introduction of double-column tariffs in Europe. We continued to cling to the single-column tariff, with only occasional attempts to give it flexibility and to obtain the benefit of the minimum tariffs of foreign countries.

But the war of 1914-18 brought new conditions at home and abroad. It would be superfluous to dilate upon this point. Our new relations to Europe and the change in our industrial situation alike called for the revision of our tariff policy and for a consideration of the international as well as the domestic aspect of our tariff laws.

As already stated, the experiences of the United States with reciprocity agreements and the bargaining features of tariffs do not indicate a continuous or settled policy. We have entered into special reciprocity treaties with neighboring peoples and have justified them on the ground of geographical or political ties. The most important of these agreements have been our treaty of 1854-66 with Canada, our treaty of 1875-98 with Hawaii, and our treaty of 1902 with Cuba, which remains in force. In addition to these special treaties we have had since 1890 a series of tariff laws which (with the exception of the tariff of 1894) have contained provisions relating to the international aspects of the tariff question—provisions which were changed from one tariff act to the next, and which were based upon widely different and even contradictory principles.

Classification of Tariff Bargaining Measures

Tariff bargaining provisions may be classified according to their objects and the methods pursued as follows:

A. For the purpose of obtaining special or exclusive concessions:

1. Penalty or additional duty method,
2. Concessional method,
3. Reciprocity treaties based on geographical and close economic relations.

B. For the purpose of obtaining equality of treatment:

1. Concessional method,
2. Penalty or additional duty method.

Penalty Duties to Secure Exclusive Concessions

The conditional most-favored-nation principle has had a logical corollary in the United States in certain of our tariff-bargaining experiences which have been directed toward obtaining special, and, where possible, exclusive

concessions. In some of these experiences the method used was that of imposing penalty or additional duties, *i.e.*, rates additional to those fixed by legislation for normal conditions.

Twice the United States has enacted general legislation which threatened the imposition of such penalty duties. The bargaining provisions of 1890 and 1897 were so similar that they may be discussed together. The earlier act provided:

Sec. 3. That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January eighteen hundred and ninety-two, whenever, and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country.¹

The policy contained in the act of 1897 was identical with that of 1890, and the phraseology almost identical, but the list of articles was changed by omitting sugar, molasses, and hides and by adding tonka and vanilla beans. The penalty rates on tea and coffee, the only articles included in both acts, remained the same.

The circumstances under which these acts were passed must be briefly recited. When the act of 1890, known as

¹ See *Field v. Clark*, 143 U. S. 649, for a discussion of the section.

the McKinley Tariff, passed the House of Representatives, it contained no bargaining provisions, all the articles which were later brought within those provisions being included in the free list. The bill removed the rates from sugar and molasses and replaced the duty on sugar by a bounty upon the domestic product. The bargaining provision was suggested by a special Presidential message, emphasizing the point that 87 per cent of the imports from Latin America entered the United States free, and that if sugar were added to the free list, there would be, with the exception of wool, no significant dutiable import from the countries to the south. The placing of all these products on the free list left the United States nothing with which to bargain for the reduction of the tariff rates in force in Latin America. Secretary of State Blaine supported the President in a letter in which he pointed out that our trade balance with Latin America was "unfavorable," and expressed the opinion that the remission of so large an amount of duty without any attempt to obtain a reciprocal remission was a tactical error. It is clear, however, that the Senate, presumably for the same reasons of domestic politics which actuated the House, desired to put these articles on the free list. The only way to do so, and at the same time use them in the bargaining provision, was to authorize the imposition of penalty duties upon them. The aggressive character of these duties was, therefore, based not upon the judgment and the policy of the Executive, who bore the primary responsibility for carrying on the foreign policy of the country, but upon political exigencies.

In the case of the 1897 tariff, the bargaining provision was included in the bill as it passed the House, when hides and skins were enumerated among the articles to be used for bargaining. The Senate struck hides and skins not only from the free list but also from the bargaining pro-

vision, substituting for them tonka and vanilla beans, articles of comparatively trifling importance. It is evident that this bargaining provision was simply reproduced from the tariff of 1890 and that the selection of the articles to be named in the bargaining provision was confined to those which were, for reasons of domestic politics, to be put upon the free list in any case. In both cases, therefore, it may be said that the peculiar form of the bargaining provision was due to the effect of our traditional isolation upon the attitude of the legislature toward foreign affairs.

The acts of 1890 and 1897 were not applicable to all countries, but only to those which produced the important raw materials enumerated.² And while these bargaining duties have been characterized as aggressive penalty duties, it must be conceded that there was, in the minds of many or all of those who enacted the measures, a sense of inequity in the products of Latin America being imported into the United States so largely free while the products of the United States imported into Latin America were so largely dutiable. There seems to have been considerable confidence that the height of the duties, the importance of the American market, and the competition between the producing countries would force concessions from them, and that the articles enumerated would consequently remain for the most part free of duty. It is, of course, characteristic of aggressive duties that they are not expected to be applied in normal circumstances.

Benefits from Negotiation Meager

The bargaining provisions of the tariff acts of 1890 and 1897, authorizing the President to apply penalty duties to products imported from countries whose

² Tea can hardly be called a raw material, but no treaty was concluded with any tea-producing country.

tariff treatment of United States products was deemed to be "reciprocally unequal and unreasonable," were not intended merely to secure equal treatment for the commerce of the United States. The offense penalized by them was not discrimination against the United States, not the levying of higher duties on our goods than on similar goods from other countries, but the levying of higher duties on American goods than were regarded as fair in view of our free admission of, or our lower duties upon, food and raw materials. The President was thus empowered to place the goods of one nation on a less favorable basis in our market than similar goods imported from other countries, in case of the refusal of that nation to grant special privileges to the United States. Under this law the President concluded agreements with Brazil, with Spain for Cuba and Porto Rico, with the Dominican Republic, with Salvador, with the German Empire, with Great Britain for her West India Colonies, and with Nicaragua, Honduras, Austria-Hungary, and Guatemala. We secured by these agreements the benefit of all or part of the rates in the newly established conventional schedules of Germany and Austria-Hungary; that is, we were granted the rates which were extended to all most-favored-nation countries. We secured also from the Latin-American Republics certain special rates which were not generally granted to third countries; and from the Spanish and British West Indies concessions which were shared only by the mother countries. All these agreements were terminated by the tariff act of August 28, 1894.

The only concession obtained by the United States under the penalty provisions of the tariff act of 1897 was that granted by Brazil in 1904. The act of 1897, which had granted free admission to most Latin-American products, authorized the President to impose penalty duties on certain enumerated articles, including coffee at the

rate of three cents a pound, when imported from countries which he thought were treating American products unequally and unreasonably.

Our Preferential Arrangement with Brazil, 1904-1922

For almost twenty years prior to January 1, 1923, the Government of Brazil had granted tariff preferences on a limited list of imports from the United States. These preferences were the sole surviving remnant of the bargaining policy embodied in section 3 of the tariff act of 1890 and in the second part of section 3 of the tariff act of 1897.³ They were originally obtained by threats to impose upon Brazilian coffee the penalty duty provided for in section 3 of the 1897 act.

The United States Tariff Commission, in its report of 1918,³ after considering our commercial relations with Brazil and other bargaining experiences, deprecated the policy of seeking special or exclusive concessions either by penalty duties or by concessions in our tariff rates, and recommended a policy of equality of treatment in commercial relations. In reference to the Brazilian arrangement the Commission said: "Only one commercial arrangement of the United States now in effect can be said to be inconsistent with the general principle (of equality of treatment), namely, that with Brazil. And this rests, not upon a treaty to which the United States is formally a party, but upon legislative and administrative measures of Brazil."⁴

In 1922, United States imports received in Brazil reductions of 30 per cent on wheat flour, and of 20 per cent on the following articles: condensed milk, rubber articles as per Article 1033 of the tariff, clocks, dyes as per Article

³ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 285.

⁴ *Ibid.*, p. 11.

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173 of the tariff (except writing inks), varnishes, type-writing machines, refrigerators, pianos, balances, wind-mills, cement, corsets, dried fruits, school furniture, and writing desks. On September 1, 1920, there went into effect in favor of Belgian products imported into Brazil a preferential reduction of 20 per cent of the duty on the following articles: scales, refrigerators, cement, corsets, rubber manufactures covered by Article 1033, pianos, paints, inks other than writing ink, and varnishes.

Under the Brazilian law preferences in tariff rates had to be granted annually, and it had been the regular practice of the American diplomatic representative at Rio de Janeiro to request formally each year the renewal of preferences to American trade. But the enactment of the tariff act of 1922 led to the question being raised whether the request for special privileges in the Brazilian market was consistent with the declared commercial policy of the United States. Since section 317 of that act provides for the imposition of additional duties upon the products of any country which places American commerce at a disadvantage compared with the commerce of any third state, it seems inconsistent for us to ask a foreign country to grant to us such concessions as might, if granted to a third state, bring into operation the penalty provisions of our law.

After considering the problem the Department of State instructed our Embassy at Rio not to request special preferences for American commerce, but to ask only for unconditional most-favored-nation treatment. The result has been that since January 1, 1923, the United States has had no preferential position in the Brazilian market.

The withdrawal of the preferences to American goods was expected to affect adversely the export trade of a few American concerns, but from a national standpoint the loss was estimated to be negligible. Flour, which enjoyed

the largest preference in the Brazilian market, would be, it was feared, "no longer able to compete with the Argentine product except in the extreme northern states."⁵ But in April, 1924, the American Consulate at Bahia showed that, aided by certain favorable circumstances, American flour had in fact held its own. Other American products, chiefly specialties, were not expected to be and have not been greatly affected by the withdrawal of preferences.

The issue, however, was a larger one than the market in any particular country for a few million dollars' worth of merchandise. Our voluntary renunciation of these established preferences undoubtedly enhanced the prestige of the United States throughout South America. For a number of years the Brazilians had conceded these preferences only because we threatened to injure their commerce, particularly that in coffee. The seeking of special privileges with a club was deeply resented, even if later it was tacitly accepted. Furthermore, Argentina resented the granting of preferences on American flour.⁶ The advantages to our political and commercial relations which will follow the application of the policy of equality of treatment in Brazil will far outweigh any national gain accruing from small reductions on a number of items in the Brazilian tariff.

The Brazilian preferences were a remnant of a policy which has been discredited by the investigations of the Tariff Commission and twice rejected by Congress. They afforded, it is true, certain narrow and immediate advan-

⁵ *United States Commerce Reports*, Sept. 26, 1921, p. 246.

⁶ One of the reasons assigned by the President of Argentina in a decree dated March 27, 1924, for reducing the duty on maté imported from Brazil is: "That Brazil, in suppressing the exemption [i.e., reduction] from duties on flour coming from the United States, has facilitated the sale of Argentine flour in the northern parts of that country; . . ."

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tages, but they were in conflict with our present policy, which offers larger political and commercial advantages in the long run. The conflict between the two policies is immediate; for the Department of State is at the present time negotiating new commercial treaties with various foreign countries and inconsistency between the proposed relations and our relations with Brazil would hamper these negotiations. Through the abandonment of our preferential position in Brazil we may have sacrificed certain immediate and small interests, but these sacrifices are not so large as they would have been some years ago, and such abandonment is necessary if the United States is to adhere to its declared principles and carry out a consistent policy.

The immediate result of the American Government's refusal to request a renewal of the Brazilian preferential arrangement was an exchange of identic notes between Mr. Hughes, Secretary of State, and the Brazilian Ambassador in Washington, dated October 18, 1923. The American note read:

Excellency: I have the honor to communicate to Your Excellency my understanding of the views developed by the conversations which have recently taken place between the Governments of the United States and Brazil at Washington and Rio de Janeiro with reference to the treatment which shall be accorded by each country to the commerce of the other.

The conversations between the two Governments have disclosed a mutual understanding which is that in respect to customs and other duties and charges affecting importations of the products and manufactures of the United States into Brazil and of Brazil into the United States, each country will accord to the other unconditional most-favored-nation treatment, with the exception, however, of the special treatment which the United States accords or hereafter may accord to Cuba, and of the commerce between the United States and its dependencies and the Panama Canal Zone.

The true meaning and effect of this engagement is that, except-

ing only the special arrangements mentioned in the preceding paragraph, the natural, agricultural, and manufactured products of the United States and Brazil will pay on their importation into the other country the lowest rates of duty collectible at the time of such importation on articles of the same kind when imported from any other country; and it is understood that, with the above-mentioned exceptions, every decrease of duty now accorded or which hereafter may be accorded by the United States or Brazil by law, proclamation, decree, or commercial treaty or agreement to the products of any third power will become immediately applicable without request and without compensation to the products of Brazil and the United States, respectively, on their importation into the other country.

It is the purpose of the United States and Brazil and it is herein expressly declared that the provisions of this arrangement shall relate only to duties and charges affecting importations of merchandise, and that nothing contained herein shall be construed to restrict the right of the United States and Brazil to impose, on such terms as they may see fit, prohibitions or restrictions of a sanitary character designed to protect human, animal, or plant life, or regulations for the enforcement of police or revenue laws.

I shall be glad to have your confirmation of the accord thus reached.

Accept, Excellency, etc., etc., etc.,

(Signed) Charles E. Hughes.

His Excellency,

Mr. Augusto Cochrane de Alencar,
Ambassador of Brazil.

Three observations may be made upon these notes:

(a) The existing reciprocity treaty with Cuba is reserved from the operation of the unconditional most-favored-nation principle. This agreement rests on special relations and may be regarded as a justifiable exception to the most-favored-nation principle, even in its unconditional form.

(b) The notes, furthermore, reserve existing commercial arrangements between the United States and its de-

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pendencies. Under the practice of nations with respect to the most-favored-nation clause this reservation was unnecessary. Commercial arrangements between a mother country and her colonies have always been regarded, in the absence of explicit stipulations to the contrary, as outside the most-favored-nation principle, whether in its conditional or unconditional form. They bear relation rather to the open-door principle and may be called up in any consideration by nations of their colonial tariff policies.⁷

(c) The United States and Brazil establish the unconditional most-favored-nation principle as the basis of their commercial relations. For the United States this is an affirmative declaration of a policy which has in practice guided our commercial relations with other states since 1909, when Congress enacted section 2 of the tariff act of that year.

A Penalty Method for Obtaining Special Concessions Proposed in 1922

A method of bargaining proposed but rejected during the tariff discussion of 1922 should be considered under this classification. It was designed to place "in the hands of the President power to penalize the commerce of any foreign country which imposes on its imports, including those coming from the United States, duties which (in comparison with the duties imposed by the United States) he deems to be 'higher and reciprocally unequal and unreasonable.'"⁸ Under section 302 of the bill as it passed the House of Representatives the penalty duties were to be imposed on "like or similar products."

⁷ This subject is discussed at length in the Report of the United States Tariff Commission on *Colonial Tariff Policies*, 1922.

⁸ *Conference Report No. 1207*, House of Representatives, 67th Cong., 2d Sess., Sept. 12, 1922, p. 146. See also speech by Senator Smoot *Cong. Record*, April 24, 1922.

Probably no more objectionable method of tariff bargaining than this has ever been suggested. The aim of this method was not, at least primarily, to remove discriminations, but to batter down tariff rates, equally applicable to all countries, which American export interests might regard as being too high, but which the foreign country might think justified by its own fiscal and industrial needs. From the beginning of our history we have been very insistent upon our right to impose any duties which we thought our domestic needs required. Foreign nations have frequently objected to our high duties, but their claims have been denied. In view of this fact, it was inevitable that Congress should reject, as a *general* policy, a method designed to employ penalty duties for the purpose of forcing down the level of foreign tariffs.

The Objectionable Policy Survives in Certain Provisos

But American tariff acts since 1894 have contained provisos applying this bargaining method to trade in *particular* products, although, as just mentioned, Congress rejected it as a general policy. These provisos may be classed as follows:

1. That the product affected shall be free of duty, so long only as a foreign country refrains from imposing a duty on it when exported by the United States. When such duty is imposed, the product will no longer be free when imported into the United States from such country, but instead will be subject to a duty specified by law. An example of this is furnished by paragraph 608 of the tariff act of 1894. This makes salt free of duty, but provides that when it is imported from any country imposing a duty on American salt it shall be subject to the duties fixed on salt in the tariff act of 1890, namely, twelve cents per hundred pounds for salt in bags and eight cents

per hundred pounds for that imported in bulk. Another case is that of wheat in the tariff act of 1913.

2. That the product shall be free, but that if imported from a country imposing a duty on a like American product the American duty on shipments from that country shall be the same as the foreign duty. This is the substance of the provision in the act of 1897 relating to petroleum and of the paragraphs in the act of 1922 relating to brick, calcium acetate, cement, coal, and gunpowder.

3. That the product shall be dutiable at a specified rate, but if imported from a country imposing a higher import duty than the American, it shall be subject at our custom houses to an additional duty equal to the difference (but in some cases not to exceed a fixed maximum). This provision is contained in those paragraphs of the tariff act of 1922 relating to automobiles and bicycles.

4. In this case the provision is identical with number 2, above, except that the duty can be put into effect only by proclamation of the President after negotiations for the removal of the foreign duty. This provision is applied to certain planed lumber in paragraph 1700 of the act of 1922.

An analysis of the policy underlying section 302 and of these provisos, however fair it may seem at first glance, will disclose not only its undesirability but certain basic distinctions applicable to all tariff negotiations.⁹

The United States has hitherto maintained that the fixing of tariff rates is a domestic matter with which foreign countries have no reason to interfere; that foreign countries have no right to object to our high rates, whether for protection or revenue, since these are fixed according to the requirements of domestic industry and of the Federal Treasury. Section 302 and the provisos above

⁹See speech by Senator Smoot, *Cong. Record*, April 24, 1922, from which some of the following discussion is adapted.

referred to, while not entirely new in principle, shifted the fixing of rates from a dignified self-determination to a petty policy of watching the other country and retaliating. In its disputes with certain foreign countries the United States has maintained that high duties, if applied uniformly to all foreign countries, give no grounds for complaint. •

Foreign countries may be levying duties higher than our own either (1) in pursuance of some definite policy (revenue, protection, or exclusion of foreign luxuries), or (2) in respect to particular commodities more or less by accident, *e.g.*, a duty may have been continued after the failure of the industry which it was designed to protect. If, on the one hand, the foreign industry is considered to require *protection* and, on the other, the corresponding American industry is seeking an export market not only in neutral and unprotected countries such as China but also in the protected markets of competing countries, then in the nature of the case the American products are those against which the foreign industry stands most in need of protection and the American market is, at the same time, one of the least hopeful for the foreigner. *Revenue* duties are laid upon articles not produced within the country which levies the duty. That country, therefore, is not an exporter of the article and is indifferent to the rate of duty levied thereon in the United States. Hence the method of the proposed section 302 is never likely to be effective.

Reduction of Duties to Obtain Special Concessions

The concessional method, as a means of obtaining special or exclusive concessions for a country's commerce, is the next classification to be considered. In addition to the penalty duties provided for in the tariff act of 1897, that act contained two provisions which empowered the Presi-

dent to grant reductions in duties in favor of nations making similar concessions to the United States. Section 3 of the act authorized the President, in return for "reciprocal and equivalent concessions," to grant special reductions from the duties on argols, brandies, sparkling and still wines, and paintings and statuary. Instead of using penalty duties, the principle is here introduced of making special reductions in the regular tariff rates on certain articles in return for reciprocal reductions in the tariff rates of other countries. The agreements under this provision required neither the ratification of the Senate nor the approval of Congress. Two series of agreements, known as the "argol agreements," were negotiated and proclaimed. They were with France, Portugal, Germany, Italy, Switzerland, Spain, Bulgaria, the United Kingdom, and the Netherlands. While we received concessions under these agreements, they were in no case confined to the United States. In most instances we merely received, either for the first time or in renewal of previous grants, all or part of the minimum and conventional rates already enjoyed by "favored" nations. In only a few cases did the agreements secure for the United States the benefit of conventional rates lower than those which had been previously effective.

The third bargaining provision in the tariff act of 1897 differs from those thus far considered in that the treaties negotiated under it had to be ratified by the Senate and approved by Congress before they became effective. This provision (sec. 4) authorized the President to enter into negotiations for concessions in foreign markets, and to offer in return reductions not exceeding 20 per cent of the duties of our regular tariff schedules, or to transfer to the free list, or to agree to retain thereon, specified articles from any country making satisfactory concessions. Treaties known as the "Kasson Treaties" were negotiated

under this provision, but they failed of ratification in the Senate and, therefore, did not become effective.

Under the tariff acts of 1890 and 1897 we tried two methods of bargaining which, because of their meager results, were finally abandoned. In the discussion which preceded the enactment of the tariff act of 1922 these methods were considered and rejected. One such was designed to provide "for special negotiations whereby exclusive concessions may be given in the American tariff in return for special concessions from foreign countries."¹⁰

Difficulties of Provision That Individual Agreements Be Ratified

The requirement that each individual tariff treaty be ratified by the Senate or approved by Congress places difficulties in the way of developing, by means of treaties, a consecutive American policy.

Repeated experiences show the futility of bargaining if individual agreements must be submitted to the Senate for ratification, or to Congress for approval. For example, under the tariff act of 1897, in compliance with

¹⁰ U. S. Congress, House Committee on Ways and Means, *Conference Report No. 1207, to Accompany H. R. 7456, Tariff Bill of 1922*. Section 301 (H. R. 7456), as passed by the House, contained provisions similar to the reciprocity provisions of the tariff act of 1897, and for the same reasons was objectionable as a bargaining measure and, therefore, was rejected upon the final consideration of the bill. Section 303 of the House bill embodied the same principle and was open to the same objections as section 301. It authorized the President to negotiate commercial treaties, but stipulated that the reductions in duties should not be more than 20 per cent, and that the agreements should not be for a longer period than five years. Agreements negotiated under this section did not require ratification by the Senate or approval by Congress. It was an effort to avoid the necessity of submitting each particular agreement to the legislative branch of the government. The constitutionality of this section was regarded by some as questionable, but whether this is so or not, it would have raised serious difficulties in practice and resulted in uncertainty and instability in our tariff policy.

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principles previously laid down by Congress, agreements (the "Kasson Treaties") were concluded with a number of foreign nations, but opposition to particular treaties developed in this country, with the result that, after four years of agitation in favor of ratification, the agreements were allowed to rest in the pigeon holes of the Senate Committee on Foreign Affairs. They had opened up the entire tariff controversy without producing constructive results.

The tariff act of 1913, which repealed the 1909 bargaining provision, cannot be said to have embodied any principle of bargaining. It contained a very general clause (section 4 A) providing that, for the purpose of readjusting the duties on importations into the United States and of encouraging the export trade of this country, the President was authorized and empowered to negotiate trade agreements with foreign nations "wherein mutual concessions are made looking toward freer trade relations and further reciprocal expansion of trade and commerce." Before such agreements became effective, their ratification by the Congress of the United States was required. The section did not lend itself to the carrying out of a consistent commercial policy. In the complex conditions of commercial bargaining, no consecutive policy can be carried out by negotiating here and there treaties or agreements which in each case must be submitted to the Senate for ratification or to Congress for approval. Congress should lay down the principles which are to determine negotiations with foreign nations and leave the Executive free to arrange particular agreements.

Reciprocity Treaties Based on Geographical and Close Economic Relations

Our experience with the concessional method of tariff bargaining under the tariff act of 1897 was not satisfac-

tory. Not only were the results meager, but the ensuing complications far outweighed the gain. More successful have been our special tariff treaty negotiations resulting from geographical and economic relations. These constitute the next classification of tariff-bargaining experiences to be considered.

Owing to the geographical and economic relation of the United States to other American countries, the United States has at various times endeavored to enter into closer commercial relations with these countries, among which are Hawaii, Mexico, Cuba, and Canada.

Special reciprocity treaties seem to emphasize the idea that national sovereignty is subject to no general international obligations and that any bargains which two nations choose to make concern them alone. It should be remembered, however, that the adoption by the United States of the conditional interpretation of the most-favored-nation clause was expected to produce a condition of equality rather than of inequality in international commercial relationships. In other words, the expectation seems to have been that the conditional method would work out much as the *unconditional* method has in fact worked out upon a limited scale, *i.e.*, within the inner circle of most-favored nations. It must be further noted that some special reciprocity treaties have been based upon the idea that there are special obligations of neighborliness which transcend the general obligation to treat friendly nations in a friendly manner and to discriminate against none, and which warrant the extension to neighbors of special favors not extended to more distant countries.

That geographical propinquity ¹¹ is a recognized ground for exceptional treatment has been referred to in another

¹¹ Pp. 83, 84, *supra*. See also memorandum by Mr. McCall, Jan. 18, 1912, 62d Cong., 2d. sess., *Cong. Record*, Vol. 48, Pt. 2, p. 1096; U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 391.

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connection. This position was affirmed in 1886 by Mr. Bayard, Secretary of State, in emphatic terms:

In its commercial aspects the expediency of an unqualified (unconditional) favored-nation clause is questionable. The tendency is towards its formal qualification, by recognizing in terms (what most nations hold in fact and in practice, whether the condition be expressed in the clause or not) that propinquity and neighborliness may create special and peculiar terms of intercourse not equally open to all the world; or by providing that the most-favored-nation treatment, when based on special or reciprocal concessions, is only to be extended to other powers on like conditions.¹²

From as early as the forties of the nineteenth century American statesmen regarded the United States as having a special interest in the status of the Hawaiian Islands. In 1842 Daniel Webster, Secretary of State, drafted a message for President Tyler in which he stated that the nearness of the Islands to the United States and the intercourse of American vessels with the Islands would

create dissatisfaction on the part of the United States at any attempt by another power . . . to take possession of the islands, colonize them, and subvert the native Government. The United States sought "no peculiar advantages, no exclusive control over the Hawaiian Government . . . Its forbearance in this respect, under the circumstances of the very large intercourse of their citizens with the islands, would justify the Government . . . in making a decided remonstrance against the adoption of an opposite policy by any other power."¹³

Again, in 1851, Mr. Webster said:

The Hawaiian Islands are ten times nearer to the United States than to any of the powers of Europe. Five-sixths of all their commercial intercourse is with the United States, and these considerations, together with others of a more general character,

¹²Moore's *Digest*, Vol. V, p. 273.

¹³Quoted in U. S. Tariff Commission: *Report on Reciprocity and Commercial Treaties*, 1918, p. 104.

have fixed the course which the Government of the United States will pursue . . . That policy is that while the Government of the United States, itself faithful to its original assurance, scrupulously regards the independence of the Hawaiian Islands, it can never consent to see those islands taken possession of by either of the great commercial powers of Europe, nor can it consent that demands, manifestly unjust and derogatory and inconsistent with a bona fide independence, shall be enforced against that Government."¹⁴

In the years which followed there was discussion of annexation and the establishment of commercial reciprocity which finally resulted in the negotiation of the treaty of January 30, 1875.

Reciprocity with Hawaii

By Article I of this treaty the United States Government, "in consideration of the rights and privileges granted by His Majesty the King of the Hawaiian Islands," and "as an equivalent therefor," agreed to admit certain articles, including unrefined sugar and molasses, free of duty. By Article II various commodities, the produce or manufacture of the United States, were on reciprocal grounds to be admitted free of duty into the Hawaiian Islands. By Article IV it was agreed that the King of Hawaii should not, so long as the treaty remained in force, "lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, or grant any special privileges or rights of use therein, to any other power, state or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty, hereby secured to the United States."¹⁵

When the treaty went into effect a duty of 10 per cent ad valorem was levied in Hawaii upon various articles;

¹⁴ *Ibid.*, pp. 105, 106.

¹⁵ Moore's *Digest*, Vol. V, p. 263.

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but by an act of the Hawaiian legislature of September 27, 1876, it was provided that on and after the 9th of the ensuing October the duty should in certain cases be raised to 25 per cent. Among the articles on which the duty was thus increased were some which, when produced in the United States, were to be admitted under the treaty free of duty.

Against this discrimination both the British and German Governments protested. By Article IV of the treaty between Great Britain and Hawaii, concluded July 10, 1851, it had been stipulated that

no other or higher duties should be imposed in the one country on the importation of any article the growth, produce, or manufacture of the other country, than should be payable on like articles from any other foreign country.¹⁶

The question thus raised was finally settled by compromise, Hawaii agreeing to restore the former rate of duty, and Great Britain agreeing "in consideration of the peculiar circumstances of the commercial relations," that the treaty provision in question should "become and remain inoperative," so long as the duty on British products did not exceed the former rate of ten per cent ad valorem.

In 1885 the treaty between the United States and Hawaii was extended. The most important change was the following provision of Article II:¹⁷

His Majesty, the King of the Hawaiian Islands, grants to . . . the United States the exclusive right to enter the harbor of Pearl River . . . and to establish and maintain there a coaling and repair station for the use of the vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

¹⁶ *Ibid.*, p. 264.

¹⁷ Quoted in U. S. Tariff Commission: *Report on Reciprocity and Commercial Treaties, 1918*, p. 115.

The commercial importance of the treaty to the United States was never very great. Political and other factors, however, were regarded as of great importance. The Hawaiian Islands came to be regarded as essential to the coast defenses of the United States. When the Spanish-American War broke out and the American fleet crossed the Pacific, the Hawaiian Government threw open its ports to American use and the inevitable result was annexation. The organic act which terminated the reciprocity treaty was passed in 1900.

Attempts at Reciprocity with Mexico

Treaties have twice been signed with Mexico, but have in each case failed of ratification. The first of these, negotiated in 1856, failed to receive the assent of the United States Senate. The other, concluded in 1883, was a rather extensive arrangement and would have established a considerable measure of free trade between the two countries, as it provided for the remission by each country of duties on a long list of articles, but, after its ratification by the Senate, Congress failed to pass legislation to put the treaty into effect.

An attempt to negotiate a reciprocity agreement with Mexico was made at the instance of the House Committee on Foreign Affairs, which on April 20, 1892, adopted a resolution declaring that every consideration suggested by geographical location, similarity of institutions, and community of commercial interests, would seem to justify every reasonable effort to promote closer trade relations with Mexico. The resolution suggested that free admission be granted by the United States to lead ores and wool imported from Mexico, in return for concessions that might be made by that country. Negotiations were entered into, but Mexico, considering the concessions offered by the United States insufficient compensation for those desired

by herself, and believing that the United States would refuse, for domestic reasons, to impose penalty duties upon Mexican products, refused to enter into an arrangement and the negotiations were without result.

Reciprocity with Canada

Except in the negotiations of 1910-11 Canada has taken the initiative in the movement for reciprocity with the United States. Although the reciprocity agreement of 1911 was not ratified by Canada,¹⁸ there has been, and is to-day, a strong sentiment in favor of reciprocity with the United States. This sentiment is strongest in the maritime provinces, in Quebec and, above all, in the agricultural region of the Canadian West, where there has been a large influx of settlers from the United States. It is from the agricultural region, which is hardest hit by the American tariff, that the reciprocity movement in Canada now receives its chief support. The opposition to reciprocity comes principally from Ontario, where a strong manufacturing influence prevails. This influence, together with fear of the possible political consequences of closer commercial relations with the United States, is of prime importance to Canadians and must be taken into account when considering the question of reciprocity.

Commercial relations between the United States and Canada have always been close, but they have frequently been confused by political issues. Such problems as fisheries, lake and river navigation, boundary disputes, and the fear of possible political consequences have tended to shape the commercial relations of the two countries. Our border trade with Canada is important and is of a character similar to our domestic trade. Import statistics show that similar products move both ways across the

¹⁸ Owing to political considerations.

border, as determined by propinquity. The volume of trade between the United States and Canada is enormous and results from the nearness of the two peoples, similarity in nature and race, political institutions, and business methods and tastes.

Treaty of 1854-66 with Canada

The revolution in British commercial and colonial policy in 1846 left Canada isolated and business depression followed. Seeking relief from this situation, she sought a reciprocity agreement with the United States. The result was the treaty of 1854, which, in addition to relieving the tension concerning the fisheries and providing for the reciprocal use of canal, river, and lake facilities, admitted to each country, free of duty, the natural products of the other. It is difficult to specify the exact results of this treaty, because of other factors of great importance. These include the investment of English capital, the Crimean War, the settlement of new lands, the crisis of 1857, and the American Civil War. The treaty continued in force until 1866, and was then abrogated by the United States because of the growing American hostility arising from Canada's attitude during the Civil War and the development of Canadian protective sentiment.

The fisheries along the coasts of Canada and the northern United States have been the cause of numerous controversies between the United States and Canada and between the United States and Great Britain. The trade in fish between the United States and Canada is of much greater importance to Canada than to the United States. The relation of the fisheries of the two countries is somewhat involved. Rights and limitations affecting the fishing fleets of both countries, outlined in old treaties, are in some respects not in accord with changed conditions. Means of conserving the salmon, halibut, and lobster sup-

ply, reciprocal rights of vessels in regard to landing to recruit seamen and purchase supplies, and concerning similar matters have been discussed by commissioners of the two countries, who have made recommendations which have been largely abortive.

The Maine sardine industry is almost entirely dependent upon Canada for its raw material, the young of the sea herring, which under the act of 1922 remain free of duty. Also, much of the product of Alaskan fisheries is shipped through British Columbia, and the industry would probably suffer if the longer sea route to Seattle were made necessary for American fishing vessels. Furthermore, our ability to profit by the old treaties granting to American vessels rights to some of the inshore fisheries is in some measure contingent upon the privilege, voluntarily accorded by Canada, of landing in Canadian ports for supplies.

Attempt at Reciprocity with Canada, 1910-11

The latest attempt to negotiate a reciprocity agreement between Canada and the United States was made by the United States in 1911. In 1910, in order to avert the necessity of applying to Canadian products the penalty duties provided in the tariff act of 1909, the United States asked Canada to make reductions in her general tariff rates in favor of the United States. After lengthy negotiations, in which President Taft himself took part, Canada agreed to reduce the duties on thirteen specified articles when imported from the United States. It was understood, however, by the parties to the negotiations that this arrangement was to be preliminary to the negotiation of a more extensive arrangement. Accordingly, negotiations in which the United States for the first time took the initiative were entered into, resulting in the reciprocity agreement of 1910-11. Under it, the tariff changes agreed

upon were embodied in four schedules. Schedule A embraced articles which were to be admitted free in both countries; Schedule B comprised articles which were to be admitted by both countries at identical rates; Schedule C contained articles on which rate reductions were to be granted by Canada; and Schedule D articles on which rate reductions were to be made by the United States. Schedule A included practically all agricultural products except wool, fish, unfinished lumber, and gypsum, and a few manufactured articles of which the most important were iron and steel sheets. Schedule B consisted largely of secondary products or manufactures of articles made free under Schedule A, such as meats, canned vegetables, lard, oatmeal, biscuits, flour, bran and middlings, and agricultural implements and machinery of all kinds. The reductions in Schedule B were due in part to an agitation in Western Canada for free trade in agricultural implements and other products used on the farm. The chief items in Schedule C were planed lumber, shingles, iron ore, and aluminum, while Schedule D included bituminous coal and a few other articles.¹⁹

In both countries the reductions in the rates of duties were very moderate, averaging approximately 10 per cent ad valorem on the part of the United States, and slightly more than 5 per cent on the part of Canada. The agreement was decidedly favorable to Canada, who obtained practically everything formerly sought by reciprocity, while, as a whole, her concessions to the United States were little more than those granted to most-favored-nation countries under her intermediate tariff.

It was agreed that the arrangement should be put into effect by concurrent legislation, instead of by treaty, as

¹⁹ For the provision relating to pulp and paper see Chap. iii, p. 70, *supra*. See also United States Tariff Commission: *Reciprocity with Canada, 1920*, p. 56.

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each party desired to be free to withdraw from the arrangement at any time. On January 26, 1911, legislation to make the agreement effective was introduced concurrently in the House of Representatives in the United States and in the House of Commons in Canada. Considerable opposition to the agreement developed in Congress, but the necessary legislation was passed by votes of the House of Representatives on February 14, 1911, and of the Senate, in special session called for that purpose, on July 22. Four days later it was approved by the President.

In Canada there was opposition from manufacturers and protectionists, who felt that the arrangement would be injurious to their interests, but economic considerations played only a minor part in the ultimate decision of the Canadian people. The fear of political control by the United States and of possible annexation were the determining factors. So strong was the influence of these considerations that the Government was compelled to appeal to the electorate. In the elections which followed, the Government was defeated, with the result that no further consideration was given at that time to the reciprocity measure.

Most of the Canadian products which would have benefited by the reciprocity agreement were placed on the free list by the tariff act of 1913, and Canadians lost interest for the time being in the question of reciprocity. But when in 1920 the United States began consideration of the Emergency Tariff Bill, which imposed higher duties on most of Canada's chief products, a new effort in favor of reciprocity was made. On April 13, 1921, Mr. W. S. Fielding, seconded by Mr. Mackenzie King, moved in the Canadian House of Commons that the reciprocity agreement of 1911 between Canada and the United States be adopted. The motion was lost by a vote of 79 to 100.

Owing to Canada's refusal to ratify the reciprocity

agreement, the act passed by the United States to put the agreement into force did not become effective.²⁰

According to a decision of the United States Court of Customs Appeals,²¹ the reciprocity act passed by the United States in 1911 was repealed by the tariff act of 1913; but Congress, apparently in order to remove any possibility of doubt, provided in section 320 of the tariff act of 1922 for the repeal of the reciprocity act.

Reciprocity with Cuba

The Caribbean presents special problems for the United States. Our interests in Cuba are particularly extensive. The Cuban reciprocity treaty of 1902²² has for its political background the Spanish-American War. President Roosevelt urged it because of our obligations to Cuba. The terms of the treaty grant a 20 per cent reduction in our tariff to Cuban products and, in return, American goods receive substantial concessions in the Cuban market. The treaty provides that these concessions shall be exclusive, *i.e.*, they shall not be extended to any other nation. Even more important, however, in the economic development of Cuba was the second treaty of 1903, political in

²⁰ Except Section II, which was the special provision dealing with pulp and paper products.

²¹ *Dow v. United States*, 7 Court of Customs Appeals, 343.

²² Similar to the reciprocity treaty between the United States and Cuba is the Canada-West Indies Trade Agreement. Under this arrangement, which was negotiated in 1912 and greatly enlarged and extended in 1920, products of the British West Indies (except those of Bermuda, which held aloof from the agreements of 1912 and 1920) are granted special treatment in the Canadian market and Canadian goods receive substantial concessions in the West Indies. About half of the British colonies in the West Indies, in fact, all whose trade with the United States was important, remained out of the agreement in 1912, through fear of retaliation by the United States. The opinion may be hazarded that, if the United States in 1920 had had a penalty provision in its tariff law, similar to that provided in section 317 of the tariff act of 1922, the Canada-West Indies agreement of 1920 would not have been negotiated.

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character, which was negotiated with Cuba and included the provisions of the Platt amendment. It provides:

The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty . . .

The advantages which a country derives from a reciprocity treaty are ordinarily to be found in an increase of its export trade. Cuba has enjoyed this advantage in a high degree. Its sugar industry not only developed under the stimulus of the reciprocity treaty until it met the deficiencies of American production, but the impetus gained carried it far beyond American requirements. Official figures show that imports from Cuba have increased at a greater ratio than that of American consumption.

Cuba long obtained from the operation of the reciprocity treaty the very unusual advantage of a virtual bonus in the price received for her sugar. A detailed study of prices²³ shows that at least in the years 1904-1909 (and to a lesser extent afterwards) the larger part of the duty which the United States Government remitted in accordance with the treaty went into the pockets of Cuban producers. In the years 1904 to 1909, inclusive, the United States imported from Cuba over 16,000,000,000 pounds of sugar, on which the remission of duty amounted to over \$54,000,000. The American consumer, it is true, benefited by a part of this remission, but the greater part inured to Cuban producers, and, since this virtual price bonus to Cuban producers did not wholly cease in 1909, the treaty had resulted, in effect, in the transfer from the Treasury of the United States to Cuban sugar producers of a sum certainly approaching, if not exceeding, \$40,000,000. This sum may not appear impressive, but

²³ U. S. Tariff Commission: *Reciprocity and Commercial Treaties, 1918*, pp. 326-335.

a decade or two ago, when prices were low and Cuba's sugar industry was really only getting on its feet, these millions played an important part in its establishment. When, as was the case for years, the price of raw sugar averaged three cents a pound or less, the virtual price bonus, amounting to the greater part of .337 cents per pound, must have been a decisive factor in the profits of many concerns.

The fact that the treaty no longer operates except under exceptional circumstances to give to Cubans the virtual price bonus which they received in the earlier years must by no means be taken as an indication that the treaty is now useless to them. It guarantees to them that they will supply, in normal times, the whole of the American imports of sugar. To bring out the value of this guarantee two possibilities should be considered:

(1) The abrogation of the treaty and the imposition of a uniform duty would permit sugars from Santo Domingo, Haiti, Mexico, Central America, and Peru to compete on even terms with Cuban sugars,²⁴ and,

(2) The abrogation of the treaty, if followed by the conclusion of reciprocity treaties (now prohibited by Article 8 of the Cuban Treaty) with one or more of the countries named, would put Cuban sugar at a disadvantage in the American market.

Article I of the treaty provides: ²⁵

During the term of this convention all articles of merchandise being the product of the soil or industry of the United States which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

²⁴ Low-cost sugars from these countries might drive out some high-cost Cuban producers.

²⁵ Treasury Decision 39362, Dec. 18, 1922.

In the tariff act of 1922 a duty was levied on a number of articles, for example, manganese, which were free of duty at the time the Cuban treaty was entered into. This same act, however, provided that nothing in its terms should be construed as in any way abrogating or impairing the provisions of our treaty with Cuba. It followed, therefore, that articles dutiable under the tariff act of 1922, but which were on the free list in the tariff act of 1897, continued free of duty when imported into the United States from Cuba.²⁶

The reciprocity treaty was not expected to yield great benefits to American exporters²⁷ and its benefits have in fact been only moderate.²⁸ The growth in the value of American exports to Cuba has been very little greater than that in other regions of the Caribbean. While Cuban sugar has driven other sugars from the American market, the Cuban preference has enabled American manufacturers to increase their share of the Cuban market, but it has not resulted in an actual decrease in the value of the exports of foreign countries to Cuba in their respective lines.²⁹ There is no reason to suppose that the treaty ever gave American manufacturers anything corresponding to the virtual price bonus which Cuban sugar growers received in the earlier years of the operation of the treaty.

The purpose of reciprocity may be to develop foreign markets for the products of a country, to promote closer political relations, to assist weaker economic units, or it may be a combination of all these ends. While special arrangements are in general undesirable for the reason that they tend to discriminate against third countries,

²⁶ Treasury Decision 39362, Dec. 18, 1922.

²⁷ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 324.

²⁸ *Ibid.*, p. 344.

²⁹ *Ibid.*, pp. 345-355.

there are cases where close political and economic bonds would, even from an international standpoint, justify a reciprocal arrangement. Our reciprocity agreement of 1902 with Cuba probably falls in this class. Its discontinuance would be a distinct injury to Cuba, whose prosperity depends on political and geographic relations with the United States, whose place no other country could take.

The effect of exclusive concessions in tariff treaties differs according to the circumstances.³⁰ Exclusive concessions may operate as bounties to the producer, as they did in the case of the Hawaiian reciprocity treaty, or they may ultimately accrue to the benefit of the consumer, as they did in the case of the Cuban reciprocity treaty.³¹

Concessional Method to Secure Equality of Treatment

At the beginning of the chapter, tariff-bargaining provisions were classified as to purpose. Those directed to obtaining special and exclusive concessions have been considered; those directed to obtaining equality of treatment

³⁰ For a discussion of the economic effect of exclusive concessions and other forms of tariff preference, see Culbertson, W. S., *Commercial Policy in War Time and After*, 1919, p. 297, *et seq.*

³¹ "The market in 1921 was dominated almost exclusively by one factor—the accumulation of large stocks in Cuba, which piled up by the end of the year into a carry-over into 1922 of about 1,000,000 long tons of raw sugar against a normal carry-over of about 100,000 tons. Under the influence of this factor, the price of sugar, raw and refined, went down continuously throughout the year 1921 from 4.50 cents per pound on January 6, 1921, to 1.81 cents on December 29. Under such conditions, the larger proportion of the duty was borne by the Cuban producer. . . . With the growing marketing strength of the Cuban producer in 1922, under the influence of the market factors described above, the price of raw sugar increased from 1.81 cents on December 29, 1921, to 3.34 cents on September 7, 1922, indicating that by that date the American buyer of raw sugar was paying the whole or the major portion of the duty." U. S. Tariff Commission: *The Relation of the Tariff on Sugar to the Rise in Price of February-April, 1923*, p. 11. See also Wright, Philip G., *Sugar in Relation to the Tariff*.

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will now be taken up under the two subdivisions of the concessional method and the penalty or additional-duty method.

The principle of equality of treatment has been fully considered in the discussions of the most-favored-nation principle.³² It is relevant in this connection, however, to emphasize the wide difference between it and the principle of seeking in international negotiations special and exclusive advantages. The principle of equal treatment gives to every nation, strong or weak, the opportunity to obtain its equitable share in international trade; the policy of special bargaining leaves the weak at the mercy of the strong.

The concessional method of tariff bargaining as found in the double-column tariffs³³ of European countries and elsewhere, supplemented by the unconditional most-favored-nation principle in commercial treaties, was designed in theory to establish equality of commercial relations. In practice, however, both the maximum-and-minimum system and the general-and-conventional system have been used as aggressive weapons. In both, the lower rates have been looked upon as the normal ones for general use, while the higher rates were fighting rates designed to force down those of other countries. As in military warfare it is sometimes hard to draw the line between the defensive and

³² See Chap. iii, *supra*.

³³ "Multiple tariff systems assume various forms. All are marked, however, by one common characteristic—they involve the establishing of two schedules of duties or more, and to the imports from any particular country they apply rates from one or another of these distinct schedules according to circumstances. A state which employs two or more schedules may penalize another which pursues a policy unsatisfactory to it, by applying to that country's imports the rates of a higher schedule; it may favor another with whose policy it is satisfied, by extending to the latter's wares the benefit of the rates in a lower schedule." U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 462.

the offensive, so, in the manœuvring of these tariffs, it is not always possible to distinguish those factors. That these tariffs, however, were not regarded in every case as purely aggressive instruments is clear from two facts, (1) that countries have usually had to keep in mind certain other countries which were already entitled to most-favored-nation treatment by political or other treaties of long standing, and (2) that comparatively little effort was made to force down the rates of single-schedule countries, most-favored-nation treatment being usually extended to them though they made only small concessions or none. In other words, the offensive use of these fighting tariffs was directed mainly against countries which themselves employed those weapons. In these circumstances, assuming an equality of skill and of economic power, it is evident that the only advantage would be gained by those who first adopted the aggressive tariff.

In any case, these tariffs have not always worked out to produce a condition of general equality in tariff matters. By virtue of the unconditional interpretation of the most-favored-nation clause they established an inner circle of most-favored nations, but these nations, while upon an equality as between themselves, constituted a privileged group among the other countries of the world. The two-column tariffs with the most-favored-nation clause, therefore, while embodying in practice a circumscribed application of the principle of equality of treatment, are in reality based on the contrary principle, as may be seen from the reflection that the universal extension of most-favored-nation rights to all countries would remove the very foundation of the system.³⁴

³⁴ The maximum and general schedules of foreign tariffs are virtually penalty tariffs. In adopting them it is not intended that they are to apply or that they are needed. They are enacted with a view to their reduction.

Offers to concede reductions in tariff rates in return for reductions in foreign rates make a superficial appeal. They seem to arise from friendliness and to lead to a general moderation of tariff rates, but this view results from centering attention on single transactions. The experience of European countries during the last generation shows that the concessional method of tariff bargaining leads by its very nature to bickerings and tariff wars. At best it results in concealed, if not open, discriminations against third countries. The outcome has been higher tariffs. Each country makes generous advances in its rates to fortify its position for bargaining purposes; and the concessions which it grants are frequently, if not usually, less generous than the preliminary tactical increases.³⁵

Speaking before the American Economic Association on December 27, 1923,³⁶ Dr. Snow stated that the American customs tariff is so high that it seriously restricts the importation of foreign goods and, therefore, is greatly resented by foreign producers. Whether the American tariff is or is not too high need not be considered in this connection, but Dr. Snow went on to suggest that by the establishment of a system of bargaining by concessions, presumably by establishing a multiple tariff, the United States might ultimately establish a lower tariff. A consideration of prevailing practices, however, will demonstrate that this result would not follow. Nations using the multiple tariff system with the maximum-and-minimum form have always definitely fixed the minimum rates

³⁵ The reasoning of this paragraph applies not only to the European multiple tariffs but to the American concessional experience under the act of 1897. It has been alleged that the rates of that act were raised over what was regarded as necessary in anticipation of reduction in treaties under section 4.

³⁶ Snow, Chauncey D., *American Foreign Trade Problems*, Address before American Economic Association, Washington, December 27, 1923. *American Economic Review*, Supplement, March, 1924.

at a level deemed necessary by them either for the protection of their home industry or for the production of revenue. Or if they used the general and conventional system, they have fixed the general rates high enough to allow abundant room for bargaining while still maintaining effective protection. The same interests which have led to the fixing of the present alleged high tariff rates in the United States would be equally effective in establishing the minimum or conventional rates in a multiple-tariff system. All maximum or general rates would then be increased above this minimum, which would be no lower than a single-column tariff. Each bargaining agreement would tend to bring into effect all or part of the minimum duties. The lowest rates obtainable in any case would be the complete application of the ordinary or minimum tariff, and any one familiar with the fate of treaties presented to the United States Senate for ratification can readily imagine how often even this would not be attained. Hence, a system of bargaining for concessions on the basis of a multiple tariff would not tend to lower the general level of American tariff rates, but rather to raise it.

Additional Duties to Secure Equality of Treatment

Penalties, or additional duties, against discriminations, used in conjunction with a single-column tariff, probably form the most effective means of establishing the principle of equality of treatment. The method was applied with some success under section 2 of the tariff act of 1909 and is embodied in Title III, section 317 of the tariff act of 1922.

Our experiences under the acts of 1890 and 1897 demonstrate conclusively the futility of bargaining for special and exclusive favors. No country could have been in a stronger economic position; but even so, the results—the actual trade gains—were small and uncertain. In no sense

did they compensate for the effort put forth, for the misunderstanding arising, and for the ill-will which they engendered among other peoples. One cannot read the accounts of these negotiations—set forth in detail in the report of the Tariff Commission on “Reciprocity and Commercial Treaties”—without reaching the conclusion that our precedents for bargaining must be sought elsewhere. Congress evidently regarded the then available precedents as valueless, for in the tariff act of 1909 it abandoned them in form and principle, and enacted a measure which suggests the sound principle which should underlie our tariff-bargaining policy. It had become evident that equality of treatment is all that a nation should expect or should ask in international trade, and that any policy seeking more is unsound. The bargaining tariff, discarded as a device for obtaining special concessions, has come to be recognized as a means of enforcing equality of treatment for our commercial interests abroad.

In the tariff act of 1909, Congress adopted in section 2 a penalty provision, the purpose of which was to obtain the removal of discrimination against American interests in foreign markets. This provision was based on the principle that every country granting our products the same treatment that it grants similar products imported from other countries is entitled to equal treatment in our markets. The regular tariff rates were made to constitute the “minimum tariff” of the United States. The “maximum tariff” consisted of these rates and, in addition, 25 per cent ad valorem. The President was then authorized to extend by proclamation the privilege of the minimum tariff to those countries found not to impose undue discriminations against the United States or its products. An investigation at the time disclosed a number of cases of unequal treatment of American products in foreign markets, and negotiations were instituted to remove them.

More favorable treatment was obtained for the commerce of the United States in the markets of Germany, France, Portugal, Austria-Hungary, Brazil, Canada, and other countries. Particular efforts were made to eliminate discriminations against American cottonseed oil.

Although sound in principle, the bargaining provision of the tariff act of 1909 was not sufficiently flexible to reach all cases of objectionable discrimination. This situation was brought to the attention of Congress by the Secretary of State, Philander C. Knox, in 1911, but no action was taken. Mr. Knox pointed out that discriminations continued against American products. Among the most objectionable were those against that distinctively American product, cottonseed oil. Italy, Austria-Hungary, Bulgaria, and Portugal, in particular, continued to discriminate against, or even prohibit the importation of, this product, with the result of favoring other edible oils.

Principle of Equality of Treatment in Tariff Act of 1922

The Tariff Commission in its report to the Congress of the United States, dated December 4, 1918, analyzed the experience of this country with reciprocity treaties and with such bargaining features as our laws have contained, and recommended the adoption of a commercial policy based upon the principle of equality of treatment. In that report it said, in part:

The guiding principle might well be that of equality of treatment—a principle in accord with American ideals of the past and of the present. Equality of treatment should mean that the United States treat all countries on the same terms, and in turn require equal treatment from every other country. So far as concerns general industrial policy and general tariff legislation each country—the United States as well as others—should be left free to enact such measures as it deems expedient for its own welfare. But the measures adopted, whatever they be,

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should be carried out with the same terms and the same treatment for all nations.

. . . The necessary flexibility can be secured by leaving the actual imposition of additional duties to the discretion of the President, who shall act always in conformity with a stated general principle and subject to general limitations defined by statute. Indeed, either system, the concessional or the additional, can be safely applied only when there is a provision for elasticity in its application and administration. It would seem indispensable that a considerable degree of freedom be left to the executive department. The restrictions within which that freedom shall be exercised must be prescribed according to the judgment of Congress. They may take the form of limiting the additions or penalties to stated ad valorem supplements in the existing duties, or to stated ad valorem duties (or equivalent specific duties) on articles appearing upon the general free list. The early enactment of legislation authorizing the imposition of additional duties at the discretion of the President is accordingly recommended by the Tariff Commission. . . .

Finally, it can not be too much emphasized that any policy adopted by the United States should have for its object, on the one hand, the prevention of discrimination and the securing of equality of treatment for American commerce and for American citizens, and, on the other hand, the frank offer of the same equality of treatment to all countries that reciprocate in the same spirit and to the same effect. The United States should ask no special favors and should grant no special favors. It should exercise its powers and should impose its penalties, not for the purpose of securing discrimination in its favor, but to prevent discrimination to its disadvantage.

The suggestions made by the Commission are developed and applied in section 317³⁷ of Title III of the tariff act of 1922. In general, this section follows the precedent established by the maximum and minimum provisions of the act of 1909, which, to quote the conferees again, "had for its purpose the obtaining of equality of treatment for American overseas commerce." Section

³⁷ This discussion of section 317 was written for the *Sixth Annual Report of the United States Tariff Commission*, 1922, pp. 4-6.

317, however, is flexible, while the provision of the act of 1909 was inflexible and, as experience showed, comparatively ineffective, because it could not be adapted to the circumstances of each case. The conferees, furthermore, pointed out that they had rejected sections 301 and 303 of the House bill, which provided, as stated in the conference report, "for special negotiations whereby exclusive concessions may be given in the American tariff in return for special concessions from foreign countries."

The concessional method of tariff bargaining, as the report of the Tariff Commission showed, would require either the reduction of rates which had been adjusted to protective and revenue needs or else the preliminary establishment, for tactical purposes, of unduly high bargaining rates, some or all of which might remain in force through the failure of negotiations with foreign countries. The conferees also rejected section 302 of the House bill, which was designed to place "in the hands of the President power to penalize the commerce of any foreign country which imposes on its imports, including those coming from the United States, duties which he deems to be 'higher and reciprocally unequal and unreasonable.'" With reference to section 317 it was stated that "the United States offers under its tariff equality of treatment to all nations and at the same time insists that foreign nations grant to our external commerce equality of treatment."

Section 317,³⁸ as finally enacted with certain amendments, provides, in effect, that the President shall endeavor to secure the removal of all discriminations which foreign countries may inflict upon the commerce of the United States. The law recognizes that there may be cases (sanitary regulations may afford instances) in which a discrimination between American and certain

³⁸ Appendix I, *infra*.

other products is reasonable, but aside from such reasonable exceptions every country which "discriminates in fact . . . in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country" is liable to discrimination against its commerce by the United States. Thus the law itself defines discrimination and makes it clear that the point to be regarded is the effect upon American commerce and not the motive or intent of the foreign country in adopting its legislation or in adjusting its rates.

Section 317 covers discriminations of all varieties, whether in customs duties or other charges, or in classifications, prohibitions, restrictions, or regulations of any kind. The Tariff Commission is to keep itself informed of all discriminations against the commerce of the United States and to make recommendations concerning the action to be taken. If, then, the foreign country does not cease its discriminations when the matter is brought to its attention, the President may impose, upon such of its products as he determines, new or additional duties of not more than 50 per cent ad valorem; and if the foreign country still persists in its discriminations, total prohibition of import may be enforced.

Further, subsection (*e*) provides that countervailing duties may be imposed upon products of the industries of any foreign country which may receive special benefits from the existence of discriminations against the United States. For instance, if the existence of a differential export duty puts American industries at a disadvantage in compelling them to pay a higher price for their raw materials, then such industries may receive special protection against any third country in whose favor the differential duties operate. The principle of this legislation is similar to that of countervailing duties to offset bounties given by foreign governments.

The presence of subsection (e) should set at rest any doubt as to the meaning of subsection (i), since discriminatory export duties are found almost exclusively in colonies. Subsection (i) states that when used in section 317 the term "foreign country" shall mean "any empire, country, dominion, colony, or protectorate" within which separate tariff rates are enforced. This definition of foreign country leaves it open to the President, if he finds that the public interest will be served thereby, to bring certain questions of tariff policy to the attention of foreign powers that have been, and are, steadily increasing their tariff differentials against the trade of the United States.

Tendencies toward Discrimination and Exclusion

At a time when a policy of equality of treatment seems particularly desirable, not only for the United States but also for all nations, a policy of discrimination and special bargaining of the harshest character is being advocated and applied by certain foreign nations. Indeed, it is not absent from the United States. It has appeared in the sections of the Merchant Marine Act providing for special export and import railroad rates on goods shipped in American bottoms, for an American monopoly in Philippine shipping, and for discriminatory customs duties on goods imported in American ships.³⁹

The policy of discrimination and exclusion expressed itself in its extreme form in the Teuton program for *Mittel Europa*, and in its counterpart among the Allies, the abortive Resolutions of the Paris Economic Conference of June, 1916. These measures on the part of the Allies were undoubtedly justified for strategic reasons, but they have no place in a program for harmony and good will among nations. Unfortunately, therefore, when the

³⁹ See Chan. xii, *infra*.

Allied and Associated Powers sat down at Paris to negotiate the final treaty of peace, these doctrines of revenge, punishment, exclusion, and trade war were a guiding influence in the construction of the treaty, particularly in the construction of its economic clauses.

The same spirit of exclusion and narrow commercialism which ruled at Paris still menaces the world with the possibility of trade wars. Attempts are being made to justify special discriminatory arrangements, upon the ground that only by such means can nations economically weak maintain themselves in competition with the stronger.

Certain countries, it is urged by some, should be permitted to enter into special arrangements with other nations and not be required to generalize their concessions. It may be desirable for political reasons to tolerate an exception to the general rule of equal treatment in order to enable a country to recover from the war. A general principle recognizing special bargaining would in the long run not help, but would injure nations economically weak. If such a principle be conceded to weak nations, it must be allowed also to the strong, and it is inevitable that the former would be worsted in any international test of power with the latter.

Special bargaining might work to the advantage of the weak nation if the strong refrained from exerting its power, but in international dealings that is not likely to occur. Weak nations, if they champion a régime of special bargaining, are only forging weapons that may be used against them. On the other hand, the principle of equality of treatment gives to the economically strong nations only the advantages which are theirs by reason of their strength. At the same time it affords the economically weak nations a degree of protection, not available to them under the harsh procedure of a system of special dealings. The best thing in the long run for any nation (and all that any is

entitled to in international affairs) is a fair, equal chance. Weak nations should count themselves happy to have this guaranteed. The United States, it is true, would have, because of its economic power, some advantages in the free, open and equal competition which would take place under a system of unconditional most-favored-nation treatment among nations, but it could obtain much greater advantage if it were so organized as to make continuous and effective use of its power to exert pressure and exact special concessions.⁴⁰

⁴⁰ A form of bargaining which differs from methods discussed in this chapter has developed under the government of the Union of Socialist Soviet Republics. The *United States Commerce Reports* (Sept. 22, 1924, p. 708) point out one cardinal point which must be understood. To quote:

"This cardinal point is the fact that foreign trade is a state monopoly in Soviet Russia. Anyone desirous of purchasing goods in that country or selling goods to it must deal with the proper Soviet Government institutions, either directly or in the last instance.

"The fact that the Soviet Government has succeeded in concentrating the whole of the foreign trade of so vast a state in the hands of a single organization is an economic factor of the utmost significance, and one which puts Russia outside any standard of comparisons with other countries.

"The Soviet Government is able, by a single decree, to remove the whole of Russia's trade from one state to another. This actually happened, following the development of the Russo-German conflict arising out of the German police raid on the premises of the Soviet trade delegation in Berlin, when Russian business was diverted to Holland and Czechoslovakia and so affected Holland's commerce as to alter the figures of her trade balance. The same thing happened after the withdrawal of the Russian trade delegation from Paris, which abruptly transferred all outstanding business to England because of a decision of the French Supreme Court in favor of a Russia-Armenian firm of silk manufacturers, whose stocks had been nationalized by the Soviet authorities, and subsequently sold in France. Likewise, the entire volume of Russia's trade with Switzerland, insignificant though it was, was transferred to Italy and Belgium upon the verdict of the Swiss courts acquitting the Russian émigrés, who shot and killed the Russian trade delegate for Italy.

"The flow of Soviet trade is regulated through the instrumentality of trade agreements, concessions and bargains."

CHAPTER V

PROTECTION AND PREFERENCE IN THE COMMONWEALTH OF BRITISH NATIONS

The true processe of English policie
Of utterward to keepe this regne in
Of our England, that no man may deny,
Ner say of sooth but it is one of the best,
Is this, that who seeth South, North, East and West,
Cherish Marchandise, keepe the admiraltie;
That we bee Masters of the narrowe see.

Therefore I cast mee by a little writing
To shewe at eye this conclusion,
For conscience and for mine acquiting
Against God and ageyne abusion,
And cowardise, and to our enemies confusion,
For foure things our Noble sheweth to me,
King, Ship, and Sword, and power of the see.
—“LIBEL OF ENGLISH POLICIE,” 1437

Truly ye come of The Blood; slower to bless than to ban;
Little used to lie down at the bidding of any man.
Flesh of the flesh that I bred, bone of the bone that I bare;
Stark as your sons shall be—stern as your fathers were.
Deeper than speech our love, stronger than life our tether,
But we do not fall on the neck nor kiss when we come together
My arm is nothing weak, my strength is not gone by;
Sons, I have borne many sons, but my dugs are not dry.
Look, I have made ye a place and opened wide the doors,
That ye may talk together, your Barons and Councillors—
Wards of the Outer March, Lords of the Lower Seas,
Ay, talk to your grey mother that bore you on her knees!—
That ye may talk together, brother to brother's face—

Thus for the good of your peoples—thus for the Pride of the Race.

Also, we will make promise. So long as The Blood endures,
I shall know that your good is mine: ye shall feel that my
strength is yours:

In the day of Armageddon, at the last great fight of all,
That Our House stand together and the pillars do not fall.

—RUDYARD KIPLING

Anglo-American Harmony

The great majority of the American people recognize that an understanding between them and the British is the basis of world peace for as many years in the future as need concern them. This feeling comes from bonds of blood, language, literature, legal tradition and social heritage—ties that are more enduring and more likely to withstand the vicissitudes of world relations than a mere political alliance. Nevertheless, conflicts of interest arise, particularly in commercial intercourse. The industries of Great Britain need raw materials and markets. Industrial life is developing in Australia, New Zealand, the Union of South Africa, and Canada. British shipping, cable control and banking facilities have secured to British traders a dominant place in world commerce. But the United States also has industries which are becoming more and more dependent on foreign sources of raw materials and foreign markets. American shipping and American banking in foreign countries have grown. The United States has extensive interests in international wireless communications, and it is not indifferent to the commercial policies of other nations.

Divisions of British Empire

The British Empire outside the United Kingdom may be roughly divided into dependent colonies¹ and self-

¹ See Chap. viii, *infra*.

governing Dominions. The commercial policy of the former is, in a greater or less degree, directed from London. The latter are in all internal matters independent nations, and in foreign affairs their desire is now seldom, if ever, disregarded by the London Government. "The Empire," General Smuts says,² "has become a Commonwealth of nations, each supreme within its borders, with the full right to be consulted, not only in the great questions of international and foreign affairs, but also about the great issue of peace and war." Philip Kerr is similarly quoted:³

The British Commonwealth today is a free association of independent nations—Great Britain, Canada, Australia, New Zealand, South Africa and Ireland. These six nations compose it; none can dictate to the other. The only constitutional link is the Crown, fundamentally a symbol of their unity. All these nations have armaments for defense, but they do not arm against one another. For their mutual defense, they rely on voluntary concerted action, primarily through the British Navy.

Colonial and Imperial Conferences

The trend of the Dominions,⁴ however, toward the status of independent nations has synchronized with a growth of empire sentiment. Although intensely loyal to their own governments and constitutions, Canada, Australia, New Zealand, and the Union of South Africa are proud of their ties of empire. They entered the war of 1914-1918 of their own volition and the mingling of British blood in Flanders, in the Near and Middle East, and on the sea is bearing fruit in a firmer union of English-speaking men and women.

Empire sentiment has crystallized since the eighties in a series of colonial and imperial conferences. In 1887 the

² *Christian Science Monitor*, Boston, Feb. 7, 1921, p. 4.

³ *Ibid.*, July 28, 1922, p. 3.

⁴ Newfoundland is officially classed as a Dominion but is not in practice so fully autonomous as Canada. Southern Rhodesia has been granted the status of a Dominion.

first conference was called at London to consider imperial defense and the fostering of empire commerce. The representatives of the government of Great Britain were more interested in imperial defense than in commercial relations; they desired a *Kriegsverein* rather than a *Zollverein*. The representatives of the colonies, on the other hand, shrank from assuming a portion of the cost of the empire's military establishment but were interested in obtaining preferential tariff treatment for their products in the markets of Great Britain.

Public discussion of imperial coöperation for defense and of commercial union continued, but with no definite progress toward preference desired by the Dominions. In 1894, Canada, becoming impatient, called a colonial conference at Ottawa. It had become evident that Great Britain was not ready to change her fiscal policy. Free trade met her domestic needs. Less than one-sixth of her trade was with the self-governing colonies. These colonies desired preferential treatment for foodstuffs and raw materials, but it was on these products particularly that the English consuming public insisted upon having no taxation. Great Britain declined to burden her great volume of trade in order to restore to the colonies a preference on their products. The resolutions of the Ottawa Conference, nevertheless, favored legislation permitting the colonies to enter into commercial agreements with each other and with Great Britain, asked that treaties preventing such action be denounced,⁵ and advocated customs preferential arrangements without waiting for the mother country to act.

Joseph Chamberlain became the colonial secretary in the conservative ministry which took office in Great Britain in 1895 and two years later, at the time of Queen Victoria's

⁵ See Chap. ii, pp. 50-52, *supra*.

diamond jubilee, another colonial conference met. Two factors were beginning to affect the movement for commercial union. On the one hand British goods were beginning to feel the effect of foreign competition in colonial markets and certain British producers began to see in imperial preference an opportunity for a protected market. On the other hand, industries were developing in the Dominions desiring protection, and protection moreover against British industries. The conference urged the denunciation of treaties hampering special commercial relations between Great Britain and her colonies. The colonial premiers present also undertook to consider the promotion of trade relations between the mother country and the colonies "by a preference given by the colonies to the products of the United Kingdom."⁶ Nothing was recorded on the subject of reciprocal preference.

The first conference after the Boer War, held in 1902, was disappointing to the more ardent advocates of imperial union. The general resolution which it adopted is of significance and throws light upon subsequent developments of imperial preference. The resolution reads: "this conference recognizes that the principle of preferential trade between the United Kingdom and His Majesty's Dominions beyond the seas would stimulate and facilitate mutual commercial intercourse, and would, by promoting the development of the resources and industries of the several parts, strengthen the Empire." Furthermore, the prime ministers of the colonies urged upon the British Government "the expediency of granting in the United Kingdom preferential treatment to the products and manufactures of the colonies either by exemption from or reduction of duties now or *hereafter imposed*."⁷

⁶ Imperial Conference, 1911, Richard Jebb, Vol. II, p. 377.

⁷ Colonial Conference, 1902, *Canadian Report*, Sess. Papers, No. 29A, 1903, p. 12.

Rejection of Preference in British Election of 1906

In 1903 Mr. Chamberlain accepted fully the principle of imperial preference and began his campaign, but in the general election of 1906 the Liberals opposed the Conservatives on the issue of protection and won. The new government was, therefore, definitely committed against both protection and preference. For the advocates of imperial preference the situation was, therefore, not auspicious for the next colonial conference which met in 1907. This conference at the end of a long debate adopted a colorless resolution leaving to each part of the Empire the determination of the commercial measures which it deemed would best promote trade relations.

Imperial Conference, 1911

In 1907 the name "imperial conference" was adopted to describe the empire gatherings and the first meeting under this new appellation was in 1911. A resolution endorsing the practice of consulting the Dominions in the case of international agreements was adopted. It reads:⁸

That this Conference after hearing the Secretary of State for Foreign Affairs cordially welcomes the proposals of the Imperial Government, *viz:* (*a*) that the Dominions shall be afforded an opportunity of consultation when framing the instructions to be given to British delegates at future meetings of The Hague Conference and that Conventions affecting the Dominions provisionally assented to at that Conference shall be circulated among the Dominion Governments for their consideration before any such Convention is signed; (*b*) that a similar procedure where time and opportunity and the subject matter permit shall, as far as possible, be used when preparing instructions for the negotiation of other International Agreements affecting the Dominions.

⁸Imperial Conference, 1911, *Proceedings, Australian Report*, No. 68, p. 15.

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Another resolution, adopted for the purpose of abrogating most-favored-nation clauses in certain ancient commercial treaties in force between Great Britain and other countries, is as follows:⁹

That His Majesty's Government be requested to open negotiations with the several Foreign Governments having commercial treaties which apply to the Overseas Dominions, with a view to securing liberty for any of those Dominions which may so desire to withdraw from the operation of the Treaty without impairing the Treaty in respect to the rest of the Empire.

Still another resolution called for the appointment of a Royal Commission representing the United Kingdom, Canada, Australia, New Zealand, South Africa, and Newfoundland to investigate and report upon the natural resources of the Empire and the development of mutual trading relations.

Imperial War Conference, 1917

In 1917 the Imperial War Conference referred to preference in these words:¹⁰

The time has arrived when all possible encouragement should be given to the development of imperial resources, and especially to making the Empire independent of other countries in respect to food supplies, raw materials, and essential industries. With these objects in view this conference expresses itself in favor of the principle that each part of the Empire, having due regard to the interests of our Allies, shall give specially favorable treatment and facilities to the produce and manufactures of other parts of the Empire.

The Conference of 1921

Another imperial conference, held in 1921, did not deal directly with commercial matters, but with the empire

⁹ *Ibid.*, p. 18.

¹⁰ Imperial War Conference, 1917, *Great Britain, Parliamentary Papers*, London, 1917, Cd. 8566.

policy toward the Anglo-Japanese Alliance then about to expire, and with the proposed conference for the limitation of armament to be held the next year in Washington.

The Conferences of 1923

Again in 1923 an Imperial Conference met in London, and in conjunction with it an Imperial Economic Conference was held. The latter reaffirmed the resolution on tariff preference adopted by the Imperial War Conference in 1917 and adopted a series of resolutions on economic matters affecting the Empire.¹¹ The Imperial Conference itself adopted an important resolution on the negotiation, signature, and ratification of treaties, reading¹² in part:

1. *Negotiation.*

"(a) It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

"(b) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

"(c) In all cases where more than one of the governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those governments before and during the negotiations. In the case of treaties negotiated at International Conferences, where there is a British Empire Delegation, on which, in accordance with the now estab-

¹¹ Imperial Conference, 1923, *Summary of Proceedings*, November, 1923, Cd. 1897, p. 13.

¹² *Ibid.*, pp. 13, 14. For the promises of the Baldwin government of preferences, see pages 183-185, *infra*. The movement for preference within the British Empire has not been confined to preferences in import schedules. For preferential export taxes see Chapter, ix. For preferences in awarding public contracts see Appendix II.

lished practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object.

"(d) Steps should be taken to ensure that those governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested. . . ."

The Old Colonial System

The colonial and imperial conferences are deeply significant both in empire affairs and in world politics. This broad feature will again be reverted to. For the immediate purpose emphasis is placed on the contribution of these conferences to the movement for commercial preference within the British Empire. The protection afforded by preferential tariffs made a strong appeal to self-interest and evoked comparisons with the old and rejected colonial system. Mr. Chamberlain, for example, in opening the colonial conference in 1897, desired to bring to the "reënfocement of sentiment the motives which are derived from material and personal interest."¹³

Preferences to colonial products had existed in Great Britain under the old colonial system before the adoption of free trade. This system of England as well as of other countries was characterized by commercial restrictions and exclusion. It produced the navigation acts, it gave to British goods a preference in the colonies and to colonial products a preference in the markets of Great Britain. After the Napoleonic Wars the British North American colonies were granted generous preferences. In 1815, for example, British North American wheat could be imported into Great Britain when the price in England reached 67s. per quarter, but no other wheat could be imported until the price reached 80s. per quarter. According to the price,

¹³ *Great Britain Parliamentary Papers*, 1897, Cd. 8596.

colonial wheat might be excluded or might monopolize the imports; the competition of foreign wheat could never deprive it of a profitable market in Great Britain. Between 1823 and 1846 colonial preference took the form of a comprehensive system. In Sir Robert Peel's tariff of 1842 preference to colonial products was granted on 375 items out of 1,825.

Effect of Free-Trade Ascendancy on Preference

In 1846 the free-trade movement impressed itself on legislation in England and swept away the Corn Laws. With these Corn Laws went most of the preferences to colonial foodstuffs and raw materials. By 1855 all preferences in the colonies had been removed, and by 1860 the remaining preferences enjoyed by colonial products in the markets of Great Britain came to an end. For the next two or three decades the British Government applied with rigor the policy of free trade and the open door. It exercised a greater control over the commercial policy of its colonies than it does to-day and more than once it directly opposed the adoption of systems of preferential duties.

The opposition of the imperial authorities to certain of the proposals of the Australian colonies is a demonstration of the scrupulous precautions which Great Britain took during the period of political ascendancy of the principles of the Manchester school of economic thought to prevent the slightest infraction either on her own part or by a colony under her control of the principle of nondiscrimination in tariffs.¹⁴

The removal of preferences in the British market aroused vigorous protests from the British colonies of North America. Depression resulted in those industries which had profited by preferential duties, and the North American provinces, finding their appeals to Great Britain

¹⁴ U. S. Tariff Commission: *Colonial Tariff Policies*, 1922, p. 780.

of no avail, sought relief in closer trade relations with the United States. The reciprocity treaty of 1854-1866¹⁵ between the United States and Canada provided, among other things, for the free exchange of natural products. This treaty is an example of one of the few cases in which Great Britain has permitted products of a foreign country to be treated more favorably than her own in a colonial market. After its abrogation by the United States repeated efforts were made by Canada¹⁶ to renew the treaty, but her neighbor south of the border, absorbed in other issues, was indifferent. Advocates of imperial preference discouraged reciprocity, and after 1891 reciprocity ceased to be a serious issue in Canada. In 1898 Mr. Laurier declared: "There will be no more pilgrimages to Washington. We are turning our hopes to the old motherland."

Revival of Interest in Preference: Canada

Mr. Laurier's phrase "turning to the old motherland" was a reference to Canada's adoption of a preference in favor of the products of Great Britain. Internal politics played a large part in Canada's adoption of one-sided preference. Indeed, the policy adopted differed essentially from the reciprocal preference discussed in the colonial conferences. Nevertheless, the voluntary grant of commercial favors to British goods was a product of the movement toward empire preference traceable in the resolutions of the colonial and imperial conferences. When Canada took this action the conferences of 1887, 1894, and 1897 had been held. In subsequent conferences the movement for preference was reflected in the gradual adoption of preference throughout the Dominions¹⁷ and finally in Great Britain itself. The story begins in Canada.

¹⁵ See Chap. iv, p. 127, *supra*.

¹⁶ The Dominion of Canada was established in 1867.

¹⁷ The Dominions in this discussion does not include Newfoundland.

In 1897 Canada adopted a "reciprocal tariff" authorizing a reduction first of one-eighth and later of one-fourth of the duty on certain articles imported from any country admitting the "products of Canada on terms which, on the whole, are as favorable to Canada as the terms of the reciprocal tariff herein referred to are to the countries to which it may apply."¹⁸ These preferences were intended for Great Britain alone—and perhaps for some of the free-trade British colonies. The British commercial treaties with Belgium and the German Zollverein, however, defeated Canada's object. The German and Belgian Governments, when the law went provisionally into effect and goods from Great Britain were admitted at the reduced rates, pointed out that under the treaties they were entitled to the same treatment in the markets of British colonies as was accorded to British goods. The reductions were, therefore, granted to German and Belgian products, and then by virtue of most-favored-nation treaties to those of most foreign countries except the United States. India, New South Wales, Holland and Japan received the reduced rate because of "the reciprocal character of their tariffs."

Belgian and Zollverein Treaties

The Belgian and Zollverein treaties¹⁹ represent the high tide of the free-trade movement in Great Britain. In them Great Britain guaranteed national treatment in her colonies to two foreign countries, *i.e.*, she agreed that they should have the benefit of any preferences enjoyed by her in her colonies. The general adoption of this principle by colonial powers to-day (with the approval of the colonies), would contribute greatly to a cordial understanding among nations, but in the minds of British colonists there was resentment that these treaties should be adopted with-

¹⁸ U. S. Tariff Commission: *Colonial Tariff Policies, 1922*, p. 665.

¹⁹ See Chap. ii, p. 50, *supra*.

out their consent, particularly as they interfered with the development of preference. It has been pointed out that the colonial conferences demanded the denunciation of these treaties for years without avail. Finally, however, on July 30, 1897, Lord Salisbury, the Foreign Secretary, gave the necessary twelve months' notice for their termination. The reasons assigned for this act were that these treaties formed a barrier to the internal fiscal arrangements of the British Empire and that they were incompatible with the close ties of commercial intercourse subsisting between the mother country and the colonies. Belgium agreed to enter into a new treaty leaving the British colonies freedom of action. Germany, however, refused to sign a new treaty, and put into effect against Canadian products her general (*i.e.*, higher or penalty) tariff rates. A trade war thereupon ensued between Germany and Canada, resulting in injury to the trade between the two countries. Negotiations failing to remove the discrimination against Canadian goods in German markets, Canada in 1903 provided in her tariff law for a surtax amounting to one-third of the duties established in the general tariff. This clause was put in force against imports from Germany. In 1910 Germany yielded to pressure and granted to Canada most-favored-nation treatment on the most important items in the Canadian export trade, in return for which Canada withdrew the surtax on imports originating in Germany.²⁰

The denunciation of these treaties left the way clear for Canada to enact openly a preference in favor of the goods of Great Britain. In 1898 the 25 per cent reduction in duties was extended to the products of the mother country, the British West Indies, Bermuda, and British

²⁰U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 479.

Guiana and a little later by order-in-council to British India, Ceylon, and the Straits Settlements.

Extension of Preference in Canada

This beginning of British preference, which since that time has grown to serious proportions, stirred the emotions of the British imperialists. Their poet, Rudyard Kipling, in verse which is better poetry than history, has Canada say:

*"Carry the word to my sisters—
To the Queens of the East and the South.
I have proven faith in the Heritage
By more than the word of the mouth,
They that are wise may follow
Ere the world's war-trumpet blows,
But I—I am first in the battle,"
Said our Lady of the Snows.*

*A Nation spoke to a Nation,
A Throne sent word to a Throne:
"Daughter am I in my mother's house,
But mistress in my own.
The gates are mine to open,
As the gates are mine to close,
And I abide by my Mother's House,"
Said our Lady of the Snows.*

In 1900 Canada increased the preference to one-third of the duties. But Canadian manufacturers began to object because the reduction cut into their advantage over the manufacturers of Great Britain, and in 1904 some readjustments were made in their favor. In the tariff revision of 1906-7 Canada made two basic changes in her tariff structure.²¹ To the general and preferential tariffs

²¹ Canada. Imports entered for home consumption, fiscal year ended March 31, 1923: Under the general tariff, \$399,949,000; under the preferential tariff, \$119,119,000; under the treaty rates, \$18,191,000; total dutiable, \$537,259,000; total free, \$265,320,000; *g*and total, \$802,579,000.

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she added a third—the intermediate tariff. Thus, she had one set of rates—the lowest—for goods from Great Britain and reciprocating British colonies; an intermediate set of rates to be used in negotiating with other countries for tariff concessions; and a general or highest set of rates applicable to all other countries. The second change was the abandonment of the uniform percentage preference and the fixing of the preferential at specified rates, frequently showing a greater or less reduction than one-third. The following typical paragraphs from the present law illustrate both of these changes:

Tariff Items		British Preferential Tariff (Per cent)	Intermediate Tariff (Per cent)	General Tariff (Per cent)
520	Batts, batting and sheet wadding of wool, cotton or other fibre, cotton wools and cotton yarns, dyed or not, n.o.p.	15	22½	25
521	Gray cotton fabrics and fabrics of flax, unbleached, n.o.p.	12½	22½	25
522	White cotton fabrics, and fabrics of flax, bleached, n.o.p.; tailors' holland of linen and towelling of linen or cotton in the web, colored or not.	15	22½	25

Canadian Trade Agreements

Trade agreements have played an important part in the commercial policy of Canada. Her enactment of an intermediate tariff following the French precedent of a maximum and minimum tariff, was caused in part by disappointment at the failure of reciprocity with the United States and the defeat of preference in Great Britain in 1906. Her agricultural, forest, and mineral

products needed export markets—even some of her factories had a surplus for export. In 1907 Canada negotiated a commercial agreement with France. Canada pledged tariff reductions chiefly on the basis of the intermediate tariff which replaced the treaty of 1893 between the two countries. The treaty did not, however, become effective until 1910. In that year Canada extended the benefits of the intermediate tariff in part to Belgium, the Netherlands, and Italy. She also extended to the United States her intermediate rates on thirteen specified articles in return for which this country agreed to exempt Canadian products from the penalty duty of 25 per cent provided for in the tariff of 1909. In 1911 Canada negotiated a reciprocity arrangement with the United States, but subsequently declined to enact her part of the requisite concurrent legislation. In 1922 she renegotiated her commercial treaty with France; in 1923, she entered into a new trade agreement with Italy, giving that country most-favored-nation treatment in return for reciprocal concessions; and in 1924 by an order in council she extended the full benefits of the intermediate tariff to Belgium and the Netherlands. In all there are now twelve countries to which Canada accords most-favored-nation treatment in tariff matters.

In 1923 Canada wrote into her tariff a standing offer of reciprocity with the United States, notification being given that if the United States reduced the duty on such products as cattle, wheat, wheat flour, oats, barley, potatoes, onions, turnips, hay, and fish, Canada would make reductions of duties on such articles imported from the United States as might be deemed reasonable by way of compensation for such reductions.²²

Concessions granted by foreign countries to Canadian

²² For reciprocity between United States and Canada see Chap. IV, *supra*.

goods in these trade agreements and reciprocal or voluntary concessions granted by other parts of the Empire to Canadian goods have been a stimulus to the establishment of American branch factories in Canada. Orders received by the parent company in the United States for goods to be shipped to a country granting Canada a preference may be shipped from the Canadian branch concern. Undoubtedly, however, the Canadian tariff on American goods is a more important factor. The United States firm which has developed a market for its products in Canada can, by locating in the Dominion, avoid the Canadian import duties on goods sold in that country, and in addition is in a position to handle that market at close range and to grow and expand with the Canadian market.²³

Other factors have contributed to the establishment of branch factories in Canada: (1) The provision of the Canadian law regulating patents whereby the person or firm securing a patent must within two years manufacture the article in Canada in order to retain the patent monopoly. (2) Canada's vast supply of cheap hydro-electric power, especially near the large distributing centers, Toronto and Montreal, Winnipeg and Vancouver; this is a large factor in Canadian industrial development and attracts American manufacturers. (3) Canada's wealth of industrial raw materials such as timber, nickel, mica, asbestos, magnesite, fuels and many others. (4) The special inducements offered by the cities of Canada, in the way of free sites, cheap power, bonuses, and tax exemptions for varying periods in order to secure the establishment of new industries and promote prosperity.

²³ It has worked out in many cases that the Canadian protective tariff enables the American branch factory in Canada to sell its product in the Dominion for almost the exact amount of the duty over the price of the same article sold in the United States.

The Commonwealth of Australia

The Commonwealth of Australia was formed January 1, 1901. It consists of six states: New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. It has an area (2,974,581 square miles) approximately equal to the area of the United States but a population of only a little over 5,000,000. Its chief pursuits are agricultural and pastoral. It is, however, rich in mineral resources and in recent years under the stimulus of protective tariffs, its manufacturing industries have developed rapidly.

The first English explorer to touch Australia was Dampier, in 1688. The first British colony, made up of 1,030 convicts, was sent out in 1787. For the next twenty-five years no inland exploration was undertaken and during that time only the country around Sidney was occupied. Not until early in the nineteenth century were the north-west coast and western Australia explored.

Prior to the establishment of the Commonwealth of Australia each of the colonies had its own fiscal and tariff system, and there ensued a wide variation in policies. Victoria, for example, adopted a protective tariff. In New South Wales, however, the people favored free trade. The act creating the Commonwealth vested in the Federal Government the power to make laws relating to "Trade and commerce with other countries, and among the States,"²⁴ and provided that the Commonwealth should have a uniform tariff with free trade among its states. The first tariff was moderately protective in character.

Beginning of Preference in Australia

The Australians adopted the policy of granting preferential tariff treatment to Great Britain and other parts

²⁴ *Official Year Book of the Commonwealth of Australia, 1918*, p. 23.

of the Empire after the other Dominions. In 1906 they entered into a reciprocal agreement with South Africa but the first extension of preferential treatment to the products of the United Kingdom was in the tariff act of June 3, 1908, which went into effect provisionally on August 9, 1907.

In framing this tariff, with its preferential provisions, the legislature gave first consideration to the protection of Australian industries and complaint was made in Great Britain that while the tariff gave the producer in Great Britain an advantage over the foreigner, it increased his disadvantage in competition with the native Australian.²⁵ The Australians replied that it was in the interests of the Empire to decentralize its manufacturing power and that the development of a diversified industrial structure²⁶ in Australia would contribute to the strength of the Empire. In general, this has been the attitude of the Dominions in the development of their program of preference. They have been willing to extend preferential treatment voluntarily to the products of Great Britain and to bargain concessions among themselves but never at the expense of their own young industries. Like the other self-governing Dominions Australia is striving to promote its own industries and intends to maintain such minimum, *i.e.*, preferential, rates as will protect home industry against empire competition.

Extension of Preference in Australia

Preferential treatment to British goods was increased in the tariff bill introduced in the Australian Parliament on March 24, 1920, effective, provisionally, from that date. The margin of preference was increased and the number of articles to which it applies so extended that preference

²⁵ *London Economist*, Aug. 17, 1907.

²⁶ Wise, B. R., *The Commonwealth of Australia*.

now affects about 90 per cent of the imports from the United Kingdom. In addition to this increase of preference to the products of Great Britain, the chief features of the tariff are the increase in protection to Australian industries, and the introduction of an intermediate tariff, following the lead of Canada, to be applied to countries granting reciprocal advantages to Australian products. In 1924 the Australian Government increased to 75 per cent the requirement that 25 per cent of the material or workmanship in goods imported from Great Britain be of British origin. It is reported that in the application of this ruling imports from the United Kingdom will be admitted under the preferential rates where all possible processes of manufacture have been performed in the United Kingdom, but if the goods can be manufactured in Australia preference will not be granted unless at least 50 per cent of the labor and materials involved is British.²⁷ The industries of Australia, as was the case in many other countries, were stimulated by the restrictions upon commerce and the unusual demands upon industry during the war period. The new tariff law introduces a provision for deferred duties,²⁸ not to go into effect immediately but on certain specified dates unless the Minister of Commerce and Finance in his discretion postpones the time of their becoming effective. They are to apply to imports of

²⁷ The Government of New Zealand has taken similar action and several of the British West Indian Colonies have also given consideration to such a change.

²⁸ It provides that "If the Tariff Board certifies to the Minister that any goods in the Schedule, upon which a deferred duty is imposed, will not be made or produced in Australia in reasonable quantities and of satisfactory quality on or immediately after the date specified in the Schedule for the collection of the duty, the Minister may, by notice published in the Gazette, defer the duty from time to time until the date specified by the Tariff Board as being the date by which in its opinion the goods will be made or produced in Australia in reasonable quantities and of satisfactory quality." *Official Tariff Guide of Australia, 1921-22*, p. 410.

products which compete with Australian industries not yet able to supply the needs of the Commonwealth but which give promise of being able to do so at an early date. Iron and steel products are chiefly affected by this new provision.

The intermediate tariff is a schedule of rates between the British preferential and the general tariff rates, although in many cases the rates are identical with the former or the latter.

One striking difference between the development of preference in Australia and in Canada is that in the former concessions and duties voluntarily granted to the United Kingdom have not been extended to any other portion of the Empire. In no case has Australia extended to any other part of the Empire a concession without receiving some concession in return. She has adhered to a policy of reciprocity bargaining similar to that pursued by the United States under the tariff acts of 1890 and 1897. She has declined to favor the generalization of concessions within the empire analogous to the practice of unconditional most-favored-nation treatment. On this policy of exclusive preference and bargaining the movement of intrainperial preferences is likely to shipwreck.

New Zealand

Like the Australians the New Zealanders are chiefly engaged in agricultural and pastoral pursuits. The two islands which constitute New Zealand have an area of 103,581 square miles and a population, excluding the native peoples, of a little more than 1,100,000. New Zealand has been referred to as the most British of the Dominions. She has taken a leading part in the colonial conferences and has on many occasions shown her loyalty to the Empire.

Prior to the discovery of New Zealand by Europeans in

the seventeenth century the islands were inhabited by the Maoris, a race of Polynesians. The islands were discovered for the western world in 1642 by Tasman, a Dutch navigator. History does not record any further explorations of the region until Captain Cook in search of a southern continent cruised around the islands in 1769. The first settlement in New Zealand appears to have been in 1792. Whaling stations were established in several places on the coast in the next few years and the first missionaries arrived in 1814. Three attempts were made to found colonies in various parts of New Zealand in 1825, but it was not until fifteen years later that the first immigrants succeeded in any colonization scheme by founding the town of Wellington. British sovereignty over New Zealand dates from 1840. The administration of government affairs was first vested in a governor responsible only to the Crown with the advisory assistance of an Executive and a Legislative Council. Representative government was first extended to New Zealand by the Imperial Parliament in 1853.

The development of New Zealand was dependent upon and progressed with the islands' intercourse with the outside world. The seals and whales found in the South Seas were responsible for the establishment of the first settlements and the depots on the islands at the end of the eighteenth century. About the same time the export of timber, chiefly white-pine, as well as the export of native flax, grew to some importance. Imports at this time were mainly powder and muskets. Later, about the middle of the nineteenth century, a more varied trade developed, and wool and other animal products along with timber became the leading articles of export. Other commodities exported were potatoes, whale-oil, and grain. The discovery of gold, the influx of outside capital, and a land

boom greatly stimulated both the import and export trade of the islands after the middle of the nineteenth century.

Preference in New Zealand: Surtaxes

Preferential tariff treatment for British goods began in New Zealand in a modest way in 1903. The New Zealand preference, however, instead of taking the form of a reduction in duties, as in the case of Canada, has taken the form of surtaxes upon foreign imports.²⁹ With the exception of one case of a remission in duty, the other of the thirty-eight items affected were made to carry surtaxes, that is, these products were admitted at the old rate when coming from any part of the British Empire but were required to pay additional duties ranging from 20 to 100 per cent of the old duties when imported from any place outside the British Empire.

In addition to these surtaxes the act of 1903 authorized the New Zealand Government to enter into reciprocity agreements providing for the reduction of tariff duties. These provisions were as follows:

Where any country, being part of the British Dominions, reduces or abolishes, or proposes to reduce or abolish, the duty on any product or manufacture of New Zealand, the governor may enter into an agreement with that country to reduce or abolish the duty on any article or articles the produce or manufacture of such country to an extent that the estimated revenue so remitted shall equal as nearly as possible the estimated revenue remitted by that country: *Provided*, That no such agreement shall have effect until ratified by Parliament.

Where any country not being part of the British Dominions reduces or abolishes, or proposes to reduce or abolish, the duty on any product or manufacture of New Zealand, the governor may, subject to or by virtue of a treaty with His Majesty, negotiate with such country for an agreement to reduce or abolish

²⁹ This practice suggests how a provision such as section 317 in the U. S. tariff act of 1922 (see Appendix I), may be used to effect a maximum and minimum tariff.

the duty on any article or articles the produce or manufacture of such country to an extent that the estimated revenue so remitted shall equal as nearly as possible the estimated revenue remitted by that country: *Provided*, That such agreement shall not have effect or be operative until ratified by an act of the Parliament of New Zealand.*

The adoption of surtaxes in New Zealand is further evidence of the unwillingness of a Dominion to reduce in favor of British products rates considered necessary for the purpose of protecting home industry or of raising revenue. In the debate on the measure it was made clear that while there was a willingness to grant concessions voluntarily to the United Kingdom, there was no sentiment in favor of free trade within the Empire. The opposition directed its criticism, however, against the surtaxes on the ground that they were a means of increasing the tariff.

In 1907 the number of items carrying the surtax on foreign products was increased from 38 to 194.

In 1921 a new tariff act was enacted. It manifests the tendency toward an increase both in the amount of the preferential items affected and in the number of the preference upon each item. It was avowedly for protection of local industries and for the increased taxation of luxuries. Previous tariffs had had only two schedules of rates—the British preferential and the surtaxes on foreign goods. The act of 1921 introduced an intermediate schedule intended to apply to the imports from countries entering into reciprocal relations with New Zealand. It also provided for an extra duty ranging from $2\frac{1}{2}$ to 25 per cent ad valorem on goods imported from countries having depreciated currencies and for special anti-dumping duties.

* *New Zealand Statutes*, III Edw. VII (No. 78). Quoted by U. S. Tariff Commission: *Colonial Tariff Policies*, 1922, p. 768. •

British South Africa

The extensive territories of British South Africa may be classified as follows: (1) the four provinces of the Union of South Africa: Cape of Good Hope, the Transvaal, the Orange Free State, and Natal; (2) the British Crown Colonies, the colonies of Basutoland, Swaziland, and the Bechuanaland Protectorate; (3) Rhodesia; and (4) the mandated territory, formerly German Southwest Africa, now designated The Southwest Africa Protectorate.

The Cape of Good Hope was settled by the Dutch in 1652 and remained in their hands until 1795 when it was seized by the British. It has remained a British possession since that time except for a brief restoration to the Dutch from 1803 to 1806. The Transvaal and the Orange Free State were settled by Dutch colonists who moved north from the Cape after the British occupied it and established independent republics under the above names. As a result of the Boer War these became British territory. The Union of South Africa was formed in 1910. The census of 1921 gives the white population of the Union at 1,519,488 and the other population at 5,409,092. Outside of the Union, British South Africa (not including Southwest Africa) has less than 50,000 whites and about 2,500,000 natives.

Customs Unions and Preferences in South Africa

The first customs union in South Africa was between Cape Colony and the Orange Free State, the convention being signed in 1889. Natal and the Transvaal were invited to join the union, but declined. In 1890, 1891, and 1892 the British Crown Colonies of Swaziland, Basutoland, and the Bechuanaland Protectorate were admitted into the customs union. Subsequently a number of attempts were made to establish a general South African

Customs Union. It was not, however, until after the Boer War in May, 1902, that the delegates of Cape Colony, Natal, Orange Free State, the Transvaal, Southern Rhodesia, and the British Crown Colonies met in conference. All the colonies represented agreed to enter into a customs union providing for the free exchange of their products and for a common tariff on foreign imports. The conference also agreed that imports from Great Britain and from reciprocating British colonies should enjoy preferential treatment. This measure, however, was not adopted without opposition, particularly from the Dutch party in the Cape and from those who feared retaliation by Germany who was an important purchaser of Cape wools. It is not at all evident that the majority of the people of South Africa were in favor of the adoption of the policy of preference. In fact, it seems to have been carried largely because of the under-representation of Cape Colony and the persistent efforts of Lord Milner, the High Commissioner. Milner had little support from the British Government for his preferential program. In a telegram to Joseph Chamberlain he said:³¹

I am rather alarmed at the apparent complete indifference at home . . . to the proposed adoption by South Africa of preference to British goods. Our difficulty was the Cape, which feared German reprisals against its large wool export to Germany. Now our telegrams from Europe speak only of dissatisfaction and threats in Germany. England seems absolutely indifferent. It is, I know, too much to expect that England should protect her colonies against being punished by foreign nations for going out of the way to do Great Britain a good turn. But they do expect some decided mark of appreciation. Any reciprocal advantage, however small, or even the hope of it some day, would encourage the sentiment here which is very strong, but will not live permanently on nothing. At present there are no South African ex-

³¹ Worsfold, W. B., *The Reconstruction of the New Colonies Under Lord Milner*, Vol. II, pp. 314, 315.

ports to Great Britain which are taxed, therefore reciprocity is impossible. But I believe it would be quite sufficient if something, however slight, was done for Canada. This would recognize the principle of reciprocity, and South Africa might hope to benefit from that some day. But it is not really the small and hypothetical advantages which anybody worries about, but proof that England cares.

Preferences to British products were continued after the establishment of the Union, but sentiment in favor of the policy of preference now seems to be diminishing. The preferences have always been relatively small as compared with those accorded by the other Dominions, and a campaign by the British minority of South Africa for the extension of the preferential policy would subject them to the political opposition of the Dutch and of the Nationalist Party. National sentiment has developed in South Africa, as in the other Dominions, in favor of the protection of domestic industries and the tendency seems to be to give increasing emphasis to this aspect of tariff legislation.

Commercial Agreement with Transvaal

Two features of commercial policy in South Africa require particular mention. The first is the commercial agreement between the Transvaal and Portuguese East Africa. The Transvaal and the Orange Free State as independent political units had no seaports, and as a result their imports passed through coast countries. The Cape and Natal taxed these imports and until late in the nineties retained all the revenue thus obtained. As this was a constant source of friction and ill-feeling, the Transvaal in 1875 sought release from the burden by concluding a treaty with Portugal giving her the right to import goods through Portuguese East Africa. The treaty also pro-

vided for the free exchange of the products of the Transvaal and Portuguese East Africa and stipulated regulations for laborers moving back and forth between the two countries. This treaty was continued when the Union of South Africa was established.³²

Clause 47, Rhodesia

The second feature of special interest in the commercial policy in South Africa relates to the tariff structure of Rhodesia. Under the terms of the Union tariff Rhodesia³³ as a part of the South African Customs Union grants preferential treatment to Great Britain and reciprocating British colonies. Clause 47, however, of its fundamental law makes additional preferences possible. This clause provides:³⁴

No customs duties levied on any articles produced or manufactured in any part of Her Majesty's dominions or in any British protectorate and imported into Southern Rhodesia shall exceed in amount the duties levied on such articles according to the tariff in force in the South African Customs Union at the commencement of this order, or the tariff contained in the customs union convention concluded between the (Cape) Colony, the Orange Free State, and Natal, in May, 1898, whichever are the higher.³⁵

Cecil Rhodes was an advocate of intra-imperial preference and by this clause sought to fix the upper limit of duties to be paid by British goods. This upper limit of rates is determined by the rates fixed in the South African

³² *Handbook of the Union of South Africa.*

³³ Except northeastern Rhodesia where the "open door" must be maintained under the provisions of the final act of the Berlin Conference of 1885.

³⁴ U. S. Tariff Commission: *Colonial Tariff Policies, 1922*, p. 756.

³⁵ For convenience the duality of Northern and Southern Rhodesia is ignored. A clause similar to the one quoted occurs in the charter of Northern Rhodesia.

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Customs Convention of 1896. The rates of that convention were relatively low and with each increase in the Union tariff since that time the main preference has increased. In the Union tariff at the present time the preference is only 3 per cent ad valorem, but the increase in the general rates over those of the convention of 1896 has been substantial and has given greater preferences to British goods in Rhodesia than exist anywhere else in the Empire.

Intercolonial Preferential Arrangements

At the Ottawa Conference in 1894 one of the requests made by the British colonies of the home government was the privilege of making preferential arrangements among themselves. Since 1894 the developments of intra-imperial preference have been rapid. The experience of New Zealand in this field of commercial policy is of less importance than the experience of other Dominions. Under the reciprocity provisions of the act of 1903 she entered upon a number of negotiations. In 1906 she concluded an agreement with Australia, but it failed of ratification in the New Zealand Parliament. In the same years she concluded an agreement with South Africa under which she was to receive the privileges of the preferential tariff of South Africa and in turn to grant certain special concessions to South African products. This agreement was terminated by New Zealand on August 1, 1922, but a new agreement was reached and made retroactive to that date. Prior to the 1921 amendment of the New Zealand tariff act Australia had enjoyed New Zealand's British preferential rates without granting reciprocal concessions. However, New Zealand, in the last few years, has increased her customs duties substantially in order to give protection to her secondary industries and to this end discontinued in

1921 the preference formerly extended to Australia. In the trade between the two countries a very large balance has always existed in favor of Australia. Representatives of the two governments arranged an agreement which was ratified by both countries in 1922. New Zealand, because of her desire to protect certain of her industries, could not accept the proposal made by the Australian Government that there should be a mutual exchange of the British preferential tariff schedules between the two countries. The reciprocal trade agreement deals specifically with 129 items and on all other goods and products the British preferential duties of both countries are applicable.

In return for the preferential treatment given Canadian goods along with other Empire goods in the New Zealand market by surtaxes of 1903, Canada voluntarily granted preferential treatment to New Zealand products in her markets. In addition, Canada attempted to negotiate a reciprocity agreement with New Zealand but was unsuccessful.

Australia, before she adopted the policy of preference to the goods of the United Kingdom, entered into reciprocity agreement with South Africa. Under this agreement, dated 1906, Australia received preferential treatment in the South African market and in return reduced her duties in most cases by 25 per cent on a specified list of South African products. The imports into Australia from South Africa, both before and after the agreement, were few and unimportant, rarely exceeding £50,000 net in a single year. On the other hand, the exports from Australia to South Africa were substantial. The agreement was unquestionably favorable to Australia but met with some approval in South Africa, particularly, because of the dissatisfaction of the Transvaal with import duties on wheat and flour. The benefits of this agreement

were exclusive and not shared by any other part of the British Empire.

Canada has shown more activity in negotiating inter-colonial agreements than any of the other Dominions. In 1904 she effected an agreement with South Africa. She has also negotiated, but without success, with both New Zealand and Australia. However, her efforts to secure an agreement with Australia seem about to meet with success. On September 25, 1924, the Prime Minister of Canada made the announcement that a reciprocal trade agreement had been concluded with Australia. Under the terms of the agreement Canada will grant to Australia her British preferential rates on about twenty of the products of the Commonwealth, and in return the Dominion will receive the benefit of Australia's preferential tariff on a limited number of commodities and her intermediate tariff on a few other items. The agreement has been passed by the Australian Parliament and will be presented for ratification at the 1925 session of the Dominion Parliament. Her negotiations with Australia suggest the difficulties which always arise in negotiating preferential agreements between countries in similar stages of industrial development. The products upon which Canada desired concessions in the Australian market were frequently those upon which Australia was most reluctant to yield concessions because of the need of protection of domestic industries.

The most important of the inter-colonial agreements to which Canada is a party is the Canadian-British West Indian agreement. Prior to the signing of the first treaty on June 2, 1912, the subject of commercial reciprocity had been discussed for many years, both in Canada and in the West Indies. In 1890 the Canadian Minister of Trade and Commerce went to the West Indies "to see what sentiment there was in favor of better commercial relations" between the two parts of the Empire. There were

no immediate results. In 1898 when Canada adopted a preferential tariff in favor of British goods she extended the concessions voluntarily to imports from the British West Indian possessions.³⁶ In 1909 the Canadian government appointed a Royal Commission on Trade Relations between Canada and the West Indies. It reported the next year in favor of a plan of reciprocal trade preferences. A number of the West Indian colonies accepted on principle the recommendations of the Commission but from the first there were misgivings in part resulting from a fear of the effect upon their trade with the United States. Following the failure of the Canadian Parliament to approve the reciprocal arrangement with the United States in 1911 a conference of representatives from the British West Indian colonies and from Canada met at Ottawa and the result was the agreement of 1912. Nine of the fifteen British West Indian colonies as well as Canada ratified the agreement. In 1920 a new agreement, greatly increasing the preferences, was negotiated and ratified by Canada and all the British West Indian colonies except Bermuda.³⁷

Attitude in Great Britain toward Empire Preference

This summary of the movement for preference in the British Commonwealth of Nations discloses that from

³⁶ Except British Honduras. The expression British West Indian colonies or possessions includes Bermuda, British Honduras, British Guiana, and Trinidad as well as the British West Indies proper.

³⁷ Mr. Churchill, speaking on the colonies, reviewed the Canadian West Indian Agreement of 1920. His attention was called to the fact that Bermuda had declined to ratify the agreement. Mr. Churchill said, "We shall endeavor to use our influence as far as possible to secure the general acceptance of it." *American Association for International Conciliation, No. 167—Present Problems of the Commonwealth of British Nations: Conference of Prime Ministers and Representatives of the United Kingdom, the Dominions and India, held in June, July, and August, 1921*, p. 413.

1897 to 1919 tariff preferences were granted voluntarily by the Dominions to the mother country and in some instances to other parts of the Empire. Furthermore, trade agreements discriminating against foreign countries and in some cases against other parts of the Empire were negotiated by the Dominions. During this period, however, Great Britain held aloof. She maintained her free-trade system intact and refused to impose duties on food-stuffs and other products in order that she might grant preferences to Empire goods. The Dominions in some cases had extended preferences voluntarily to the United Kingdom in the hope that she would ultimately reciprocate; in other cases the leaders openly disclaimed this motive and asserted that preference to the United Kingdom was granted because of loyalty to the Empire and because of a desire to show appreciation to the mother country for her assistance and protection. During recent years increases of preference have also been due in part to the propaganda of manufacturers of Great Britain, who benefited by the preferential treatment.

In 1919 Great Britain changed her policy, at least temporarily. She granted preference to Empire goods on all products upon which duties were imposed. This important decision of the British Government is related to the resolutions of the colonial and imperial conferences, but its immediate cause was the war and the renewed interest which followed in the mercantile policies of exclusion and discrimination. These policies found expression in the Paris Economic pact of June, 1916,³⁸ in the Imperial War Conference in 1917, and in the reports of the British Committee on Commercial and Industrial Policy after the War.³⁹ The interim report of this Committee

³⁸ See pages 294-295.

³⁹ *Final Report of the Committee on Commercial and Industrial Policy After the War, 1918*, p. 52.

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declared in favor of the principle of preference and recommended that preferences should be granted to the natural products and manufactures of the British Overseas Dominions in customs duties then or hereafter imposed. The final report of this Committee, submitted on February 2, 1918, summed up its conclusions on preference as follows:

Preferential treatment should be accorded to the British Overseas Dominions and Possessions in respect to any Customs Duties now, or hereafter to be, imposed in the United Kingdom, and consideration should be given to the expediency of other forms of Imperial Preference.

This statement sounds very much like the resolution of the colonial conference of 1902 and in the war atmosphere it found ready acceptance among British leaders. The Coalition Ministry in power in Great Britain before the elections in 1918, while declaring against imposing fresh taxes on food and raw materials, added that preference "will be given to our colonies upon existing duties and upon any duties which for our own purposes may be subsequently imposed."

Preference to Empire Goods Granted in 1919

Finally, in the budget of 1919 preferences to empire goods were embodied in law. The preferences were granted on all goods dutiable when imported into the United Kingdom and this list, which is comparatively limited, finds its chief significance in the fact that the preference applies (with several minor exceptions) to all goods which are dutiable.

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Preferential rates granted in Great Britain to Empire goods.⁴⁰

Goods	Rate of Duty
Tea	Five-sixths of the full rate
Cocoa	
Coffee	
Chickory	
Currants	
Dried or preserved fruit (within the meaning of s. 8 of the finance (No. 2) act, 1915)	
Sugar	
Glucose	
Molasses	
Saccharin	
Motor spirit	
Tobacco	Two-thirds of the full rate
Articles chargeable with the new import duties imposed by s. 12 of the finance (No. 2) act, 1915 [<i>i.e.</i> , McKenna duties, see pages 183, 184 <i>infra</i>]. . . .	
Wine:	
Not exceeding 30° of proof spirit. . . .	60 per cent of the full rate
Exceeding 30° of proof spirit. . . .	66⅔ per cent of the full rate
Sparkling wine in bottle (additional duty)	70 per cent of the full rate
Still wine in bottle (additional duty) . . .	50 per cent of the full rate
Spirits.	Rates equivalent to the full rates as chargeable under this act up to Sept. 1, 1919

Reference was made in an earlier chapter⁴¹ to the anti-dumping duty of 33 1/3 per cent (now lapsed) provided in the Safeguarding of Industries Act of 1921. This same act provided a temporary duty on the products of certain so-called "key" industries. With respect to the imports

⁴⁰ The British Empire is thus defined in the Finance Act of 1919:

"For the purposes of this section—'The British Empire' means any of His Majesty's dominions outside Great Britain and Ireland, and any territories under His Majesty's protection, and includes India:

"Provided that, where any territory becomes a territory under His Majesty's protection, or is a territory in respect of which a mandate of the League of Nations is exercised by the Government of any part of His Majesty's dominions, His Majesty may by Order in Council direct that that territory shall be included within the definition of the British Empire for the purposes of this section, and this section shall have effect accordingly."

⁴¹ See page 74.

of these products from points within the Empire, the act provided:

(3) No duty shall be charged under this section on goods which are shown to the satisfaction of the Commissioners to have been consigned from and grown, produced or manufactured in the British Empire, and for the purposes of this subsection goods shall be deemed to have been manufactured in the British Empire which would be treated as having been so manufactured for the purposes of section eight of the Finance Act, 1919, (which relates to Imperial preference), and that section shall apply accordingly.

At the Imperial Economic Conference in 1923 the Baldwin Government promised the Dominions increased preferences on tobacco, sugar, and wine and new preferences on dried and preserved fruit, fresh apples, fruit juices, canned salmon and lobster, honey, tobacco, sugar, and wines, by imposing a new duty when these products are imported from foreign countries and admitting them free when imported from countries within the Empire. Following the Conference the Baldwin Government was defeated in an election on its tariff policy and with the incoming of the Labor Government the proposed preferences were defeated by a close vote. This outcome of the preference proposals was very disappointing to most of the Dominions which are ardent advocates of imperial preference.

Mr. Snowden, Chancellor of the Exchequer, in presenting the first budget of the MacDonald Ministry declared ⁴² against the further extension of preference for empire goods in British markets and against the extension beyond August 1, 1924, of the McKenna duties. On this latter action he said:

I come now to a matter which I anticipate will be more controversial than the proposals I have already put before the Com-

⁴² *The Times (London)*, April 30, 1924, pp. 7, 8.

mittee—namely the new import duties, usually called the McKenna duties. These, as the Committee well know, were imposed in 1915 on imported motor-cars and motor-cycles, other than commercial vehicles, musical instruments, watches, and kinematograph films. Like some other duties imposed at the same time, they have never been made a permanent part of our fiscal system, but have been renewed from year to year. They will expire on May 1 unless steps are taken to revive them. It is interesting to note in passing that the right hon. gentleman the member for West Birmingham (Mr. A. Chamberlain) decided in 1919 to make the date of renewal May 1 instead of August 1, the usual date for the renewal of annual duties, in order, as he said, to distinguish these duties from the others and mark the fact that they were provisional. (Liberal and Ministerial cheers.) It was made perfectly clear when these duties were first imposed that they were intended purely as a temporary war tax. The main argument which has always been put forward from these benches since has been the need for revenue. I think the time has now come for these duties to disappear. (Liberal and Ministerial cheers.)

On the other hand, I wish to avoid hardships to traders which might occur if the duties lapsed in two days without notice. I propose, accordingly, that the duties shall be renewed until August 1 next, the ordinary date of renewal, but that they must expire finally on that date. I am giving this extension of time to enable the trade to clear off their duty-paid stock, and I think free-traders in the Committee will agree with me in doing so. (Cheers.) The cost of the abolition of the duties will be £2,500,000 this year and £2,750,000 in a full year. I do not intend to argue the case for the abolition of these duties now, but there will be full opportunity of doing so. I may say here that as this question of the imposition of duties upon manufactured articles was made an issue by the late Government at the last General Election and the country gave a most decisive verdict against it (Unionist cries "No"), we are bound to give effect to that popular decision.

With the defeat of the Labor Government and the return of a Unionist Government in November, 1924, hope was again revived for imperial preference within the Empire. In his election address Mr. Baldwin outlined the attitude

of his government on the subject of imperial preference as follows:⁴³

The best hope of industrial revival lies, however, in my opinion, in the development of the resources and trade of the British Empire. The policy of encouraging mutual trade in the Empire by measures of Imperial preference, and of using our finance to promote empire development and empire settlement, is one to which we adhere, and which we shall steadily keep to the front.

On the subject of protection and the safeguarding of industries, Mr. Baldwin gave out the following party manifesto:⁴⁴

. . . While a general tariff is no part of our programme, we are determined to safeguard the employment and standard of living of our people in any efficient industry in which they are imperilled by unfair foreign competition, by applying the principle of the Safeguarding of Industries' Act or by analogous measures. . . .

Policy of Preference Distinguished from Policy of Protection

In this as well as in any other discussion of commercial policy it will contribute greatly to clarity if the policy of protection of national industries is distinguished from the policy of preference to the products of one political unit in the territory of another. Unfortunately, these two policies are often treated by some British writers and publicists as inseparable and equally entitled to praise or blame. Protection of the home market for the benefit of national industries is an expression of nationalism. Its object is to diversify a nation's economic life and to afford varied opportunities for the application of the genius of

⁴³ *The Times* (London), Oct. 13, 1924. See also *House of Commons, Parliamentary Debates*, Vol. 179, No. 10, Dec. 17, 1924, p. 1038 *et seq.*; *Commercial Intelligence Journal*, Ottawa, Canada, Vol. XXXII, No. 1100, Feb. 28, 1925, p. 189; *The Times* (London), Feb. 17, 1925, p. 8.

⁴⁴ *Ibid.*

a people.⁴⁵ It is in no sense aggressive. So long as nations are the recognized units of world society and so long as there are differences in costs of production, competitive conditions, and economic standards nations may be expected to determine for themselves how high or how low their tariff duties are to be. The need of a government for revenue or of a people for food or raw materials and the stage of industrial development in which a nation finds itself constitute the determining factors.

Preference, on the other hand, is an expression of modern imperialism. In contrast with the policy of protection it is aggressive. In its extreme form as found in the French policy of assimilation, it seeks to extend to new areas (*e.g.*, Indo-China) the control of the economic system of the country which happens to have the political power to impose the preferential conditions.

The distinction between protection and preference is emphasized by their application in the British Empire. The need for protection in the Dominions has always marked the downward limit of preference. Nationalism in the Dominions has checked the imperialistic desires of the export industries of Great Britain. The policy of protection has made in the case of some products, and will make in the case of others, the policy of preference a mere political gesture.

Is Preference a Matter of Domestic Concern Only?

In the British Empire preference is ably defended on both economic and political grounds. It is usually admitted that discriminations between nations are not justified but it is argued that just as the policy of protection is a matter of domestic concern only, so also is the policy of preference within the British Commonwealth of nations.

⁴⁵ Hamilton, Alexander, *Report on Manufactures*, 1791.

Mr. W. S. Fielding, Canadian Minister of Finance, speaking in the Canadian House of Commons on May 23, 1922 said:⁴⁶

When that principle [the principle of preference], was adopted by the Canadian Government it gave offence for a while to some of the people of other nations. Germany, in particular, took offence at it, and for a while undertook to penalize us because of the action we had taken. Other countries, perhaps, did not like it, but still took no very strong part against us. . . .

In the United States some objection was taken, but not in an official way. There was a good deal of discussion in the American press as to this, as was said, "Unfriendly act;" but the American government never took objection. When the matter came up they understood that it was entirely a question within our own family circle. And that is the situation to-day. We stand by the British Preference to-day, and the world recognizes that it is our right to make any arrangement we desire within the Imperial family without any other nation having cause to take offence at it.

Not infrequently the policy of British preference is justified by citing the American union of states as a precedent. No one familiar with the tendencies of political life in the United States would cite this analogy. The individual American state has no relations with foreign nations and tends to have its independence more and more restricted by the unification of American life under the Federal Government. The Dominions of the British Empire are evolving in precisely the opposite direction; they are dealing more and more directly with foreign powers and their domestic autonomy is complete. The true analogy, if one is desired, is between the American states, on the one side, and on the other side, the states or provinces of Canada, of the Union of South Africa, and of Australia; *i.e.*, between, for example, Nebraska and Alberta or New South Wales and Pennsylvania.

⁴⁶ Extract from the "Budget Speech," Canada, *House of Commons' Debates*, Vol. LVII, No. 49, p. 2185.

Nature of Self-Governing Dominions

The bond between the self-governing Dominions of the British Empire and Great Britain has been referred to as an alliance. This relation seems more accurate than the relationship of mother country and colony. Reference has already been made to the independence of these Dominions—their control over internal affairs and their influence in the international councils of the British Empire. Their fiscal independence has been particularly emphasized and has included protective tariffs which protect their industries against those of Great Britain. They are not bound by provisions in British treaties unless they elect to be (except in the case of a few old and unrevised treaties). Their divergent interests and freedom of independent action in this respect is safeguarded by a provision inserted in the treaties of Great Britain since the beginning of this century making these treaties applicable to British colonies, possessions and protectorates beyond the seas only upon notice to that effect given through the British Foreign Office. Separate withdrawal as well as separate adhesion is also permitted to the overseas possessions upon notice. Canada conducted the reciprocity negotiations of 1910-11 with the United States direct and not through the Foreign Office at London. These Dominions entered the Great War of 1914-18 voluntarily and the London Government was not in a position to compel them at any time to send a single soldier or to pay a single dollar. They maintained their own overseas units. They sat in the Peace Conference as nations, signed the Peace Treaty as nations, and are participating in the League of Nations as nations. South Africa, New Zealand, and Australia were granted former German territories which they now hold under mandates. The right of the Dominions to negotiate treaties was recognized by

the Imperial Conference in 1923. Ireland, the latest portion of the Empire to assume a Dominion status, has a minister at Washington and a similar step has been proposed for Australia and Canada. The Canadian case will serve for illustration.

With the completion of the work of the Canadian War Mission to Washington in 1920 the Meighen government included in the 1921 Canadian Supply Bill the following item which has been continued in all subsequent estimates:

Miscellaneous—Canadian Representation in the United States, \$60,000.

When asked by Mr. Mackenzie King, then leader of the opposition, if any appointment at Washington had been made, Mr. Meighen replied:⁴⁷

There is some urgency in regard to the matter. I do not recall what was said in the House during the debate last year, but it is important that the office be filled. The reason the office has not been filled up to now, is merely that the Government has not decided on the best person to fill this very important position.

Previous to May, 1920, a correspondence was carried on between the United States, Canada, and Great Britain with reference to the appointment of a Canadian Minister in Washington. It was stated on the floor of the House of Commons that it was not possible to make public this correspondence. However, the following statement was made to the House on May 10, 1920, which embodies the arrangement:

As a result of recent discussions an arrangement has been concluded between the British and Canadian Governments to provide more complete representation at Washington of Canadian interests than has hitherto existed. Accordingly, it has

⁴⁷ *House of Commons' Debates*, Apr. 21, 1921, p. 2462.

been agreed that His Majesty, on advice of his Canadian ministers, shall appoint a Minister Plenipotentiary who will have charge of Canadian affairs and will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from and reporting direct to the Canadian Government. In the absence of the Ambassador the Canadian minister will take charge of the whole Embassy and of the representation of Imperial as well as Canadian interests. He will be accredited by His Majesty to the President with the necessary powers for the purpose.

This new arrangement will not denote any departure either on the part of the British Government or of the Canadian Government from the principle of the diplomatic unity of the British Empire.

The need for this important step has been fully realized by both Governments for some time. For a good many years there has been direct communication between Washington and Ottawa, but the constantly increasing importance of Canadian interests in the United States has made it apparent that Canada should be represented there in some distinctive manner, for this would doubtless tend to expedite negotiations, and naturally first-hand acquaintance with Canadian conditions would promote good understanding. In view of the peculiarly close relations that have always existed between the people of Canada and those of the United States, it is confidently expected as well that this new step will have the very desirable result of maintaining and strengthening the friendly relations and co-operation between the British Empire and the United States.

On the subject of representation at Washington, Mr. Fielding, speaking as Minister of Finance in 1921, had this to say:

I am of opinion that we have got as far as we need to go to-day. We are right at the very verge of independence. There are some who wish to go further, and while I do not quarrel with them for holding that view, I do not agree with them; and I do not believe the majority of the people of Canada do. . . . My view is that this proposal of an Ambassador at Washington is not a useful one. My belief is that the interests of Canada can be served by a Minister of the Crown after consulting with his

colleagues at a Council meeting maybe, taking the afternoon train down to Washington and meeting the authorities in the United States. . . .⁴⁸ We cannot be in the Empire and not accept the responsibilities which that involves. I am not saying anything in a controversial sense, but my view is that we have to-day, in the making of commercial treaties, all the power that we ought to have or that is any good to us.

Preferences Not Consistent with Growing Diplomatic and Fiscal Independence

In spite of the present and increasing independence of the Dominions the most elaborate system of tariff preferences in the world is found in the tariffs of these Dominions. These preferences discriminate against nations outside the British Empire with which the Dominions claim the privilege of sitting as equals in the councils of nations and even against other parts of the Empire. The Dominions have apparently assumed that the British Empire is a unit for commercial purposes⁴⁹ but an alliance of separate nations for the purpose of diplomacy. The preferential agreements negotiated by the United States under the tariff acts of 1890 and 1897,

⁴⁸ *House of Commons' Debates*, Apr. 21, 1921, pp. 2462-2475.

⁴⁹ J. A. Hobson in *Problems of a New World*, pp. 219, 220, says:

" . . . If the British Empire was already before the war too big, widespread and various for effective imperial control, and an object of jealousy and suspicion to other Powers, these defects and dangers are now greater. Many of the tropical products of which the whole world is in need now lie exclusively within our political control. Hitherto the substantial equality of commercial opportunities given to foreign merchants by our Free Trade system has turned the edge of enmity. But the new policy of preference and imperial conservation, if continued and developed, could not long escape challenge from Powers whose requirements for industry and consumption are identical with ours and who find themselves at a disadvantage by reason of our monopoly of tropical supplies. Nor is it merely or mainly a question of trade. The economic value of empire to the imperialist interests lies more and more in the gains of the financial ownership and exploitation of the mines, railways and plantations, and the

of which the Brazilian arrangement⁵⁰ remained until January 1, 1923, the sole surviving remnant, have been condemned.⁵¹ Preferences between self-governing parts of the British Commonwealth are open to the same objections.

An exclusive reciprocity agreement between South Africa and Australia, for example, is open to the same objection as an exclusive reciprocity agreement between the United States and France. Excluded nations can not be expected to accept the fiction of empire in justification of their exclusion from extensive areas of the earth's surface. British control of large areas has been tolerated because of a liberal commercial policy, and careful students of international relations have watched with much concern the growth of imperial preference.

Preference a Source of Friction within and without the Empire

If imperial preference were necessary to establish solidarity and to maintain security for the British Empire, much could be tolerated for its sake. A disruption of the Empire would be a calamity. The most intelligent supporters of preference uphold it sincerely on political grounds, although the appeal which it makes to the selfish material interest of commercial classes within the British Empire has had a disturbing influence. The evil results of preference, however, are likely to be greater than its benefits. Aside from the growing irritation created in foreign countries preference has been a source of friction within the Empire. Protection of domestic industries, as already pointed out, has been given first consideration in

native labour available on easy terms upon the spot. Whatever formal equality of opportunity be accorded, foreign capitalists and concessionaires are well aware that they can only participate indirectly and to a small extent in the more lucrative business propositions."

⁵⁰ See page 109.

⁵¹ See pages 139-140.

each Dominion. The minimum tariff in Australia, New Zealand, South Africa, and Canada, that is, the rate of duty imposed on British goods, has been fixed at a point high enough to protect domestic industries. The establishment of a customs union has never been seriously discussed. As industries grow and the Dominions become interested in export trade, difficulties are bound to result over discriminations within the Empire. The same problems of exclusion and inclusion which arise when exclusive agreements are negotiated between nations will result from a negotiation of exclusive agreements within the British Empire. Preference then will contribute not to union, but to disunion. Added to this will be the hostility excited by foreign nations denied equal trade in the far-flung British Empire. A monopolization by the British of a large portion of the earth's surface will tend to force other nations to combine in protest. For generations the British Government has been a foremost advocate of two liberal principles of international economic policy, the one the unconditional most-favored-nation principle, the other the principle of the open door. Both have for their purpose the establishment of equality of economic opportunity. The self-governing Dominions have asserted that they are nations to avoid the obligation of the "open-door" principle and that they are colonies to avoid the obligation of the unconditional-most-favored-nation principle. Would it not be a contribution of first importance to world peace if the Dominions would decide to accept in one form or the other the obligation of equality of economic opportunity? ⁵²

⁵² Mr. Hughes, Secretary of State of the United States, at Montreal on September 4, 1923, said: "I believe that we shall be able at no distant day to keep within reasonable limits some of our pressing economic rivalries by fair international agreements in which the self-interest of rivals will submit to mutual restrictions in the furtherance of friendly accord."

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British Commonwealth an Example of International Coöperation

The movement for preference, it may be recalled in conclusion, is a mere by-product in the evolution of the Commonwealth of British Nations. The Anglo-Saxon who has given the world many precious principles of constitutional government and social institutions is also evolving the technique and principles of international coöperation. The British nations, each independent, come together now at regular intervals in imperial conferences to consider their common interests and problems. The growth of the institution of the conference in the British Empire is a distinct contribution to the methods of establishing peace among nations. The first conference in 1887 was little more than an aspiration toward further coöperation. The invitation to the second conference indicated that such meetings would "afford valuable opportunity for the informal discussion of many subjects of great interest to the Empire."⁵³ This conference adopted the following resolution:

. . . the premiers are of the opinion that it would be desirable to hold periodical conferences of representatives of the Colonies and Great Britain for the discussion of matters of common interest.

The third conference took place at King Edward's coronation in 1902. The Colonial Secretary in his letter of invitation "takes advantage of the presence of the Prime Ministers to discuss various questions of important interest." This conference resolved:⁵⁴

That it would be to the advantage of the Empire if Conferences were held, as far as practicable, at intervals not exceed-

⁵³ Colonial Conference, 1907, *Canadian Report*, Sess. Paper, No. 144, p. 2.

⁵⁴ *Ibid.*, p. 3.

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ing four years, at which questions of common interest affecting the relations of the Mother Country and his Majesty's Dominions over the seas could be discussed and considered as between the Secretary of State for the Colonies and the Prime Ministers of the self-governing Colonies. The Secretary of State for the Colonies is requested to arrange for such Conferences after communication with the Prime Ministers of the respective Colonies. In case of any emergency arising upon which a special Conference may have been deemed necessary, the next ordinary Conference to be held not sooner than three years thereafter.

These conferences, step by step, have assumed a more definite shape and acquired a more continuous status. While the first three conferences were incident to imperial celebrations, the resolution adopted in 1902 prescribes future meetings at intervals and solely for the transaction of business.

The next conference, scheduled for 1906, was held in 1907. This conference followed definite agenda. It seriously discussed the establishment of a permanent Imperial Council, adopting the following resolution:⁵⁵

That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years, at which questions of common interest may be discussed and considered as between his Majesty's Government and His Governments of the self-governing Dominions beyond the seas.

The Prime Minister of the United Kingdom will be *ex officio* President, and the Prime Ministers of the self-governing Dominions, *ex officio* members, of the Conference. The Secretary of State for the Colonies will be an *ex officio* member of the Conference and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions.

Such other Ministers as the respective governments may appoint will also be members of the Conference—it being understood that, except by special permission of the Conference, each

⁵⁵ Colonial Conference, 1907, *Minutes of Proceedings*, London, Cd. 3523, p. v.

discussion will be conducted by not more than two representatives from each Government, and that each Government will have only one vote.

The Conference of 1911 discussed an Imperial Council, created by legislation and with actual powers, but the proposal did not gain a favorable vote.

In the conference held in 1921, "all members of the Conference expressed a vivid sense of the value of this year's meeting in that respect"⁶⁶ and a desire that similar meetings should be held as frequently as possible."

Several plenary meetings and several meetings of the Prime Ministers were devoted to a consideration of the question of the proposed conference on the constitutional relations of the component parts of the Empire, and the following resolution was adopted:⁶⁷

That Prime Ministers of the United Kingdom and the Dominions, having carefully considered the recommendation of the Imperial War Conference of 1917 that a special Imperial Conference should be summoned as soon as possible after the War to consider the constitutional relations of the component parts of the Empire, have reached the following conclusions:

(a) Continuous consultation, to which the Prime Ministers attach no less importance than the Imperial War Conference of 1917, can only be secured by a substantial improvement in the communications between the component parts of the Empire. Having regard to the constitutional developments since 1917, no advantage is to be gained by holding a constitutional Conference.

(b) The Prime Ministers of the United Kingdom and the Dominions and the Representatives of India should aim at meeting annually, or at such longer intervals as may prove feasible.

(c) The existing practice of direct communication between the

⁶⁶ Referring to the frequent association of the Dominions and the United Kingdom in considering and determining the course to be pursued in respect to the foreign relations to the Empire.

⁶⁷ Conference of Prime Ministers, etc., *Summary of Proceedings and Documents*, Great Britain, Cmd. 1474, p. 3. See also *Consultation of Matters of Foreign Policy and General Imperial Interest*, London, 1925, Cmd. 2301.

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Prime Ministers of the United Kingdom and the Dominions, as well as the right of the latter to nominate Cabinet Ministers to represent them in consultation with the Prime Minister of the United Kingdom are maintained.⁵⁸

Two cases of inter-empire governmental machinery throw an interesting light upon the development of international coöperation as illustrated by the British Empire. An Imperial Shipping Committee has been established to facilitate the improvement of means of communication between different parts of the Empire. It reports to the Prime Ministers of the Overseas Dominions and of Great Britain and is "the first regular piece of imperial governmental machinery."⁵⁹ The second case is the Imperial Economic Committee agreed to at the Imperial Economic Conference in 1923. The function of this committee is to consider and advise upon matters of an economic or commercial character, not dealt with by the Imperial Shipping Committee, which are referred to it by any of the governments within the Empire. It is, however, significant that Canada dissented from the establishment of this Committee.⁶⁰

⁵⁸ *Ibid.*, pp. 9, 10.

⁵⁹ Stephenson, W. Tetley, *Communications*, 1924, in the *Resources of the Empire* series, p. 19.

⁶⁰ Imperial Economic Conference of Representatives of Great Britain, The Dominions, India, and The Colonies and Protectorates, held in October and November, 1923. *Record of Proceedings and Documents*, January, 1924, Cmd. 2009.

CHAPTER VI

THE CLOSED DOOR

Now this is the Law of the Jungle—as old and true as the sky;
And the Wolf that shall keep it may prosper, but the Wolf that
shall break it must die.
As the creeper that girdles the tree-trunk the Law runneth for-
ward and back—
For the strength of the Pack is the Wolf, and the strength of
the Wolf is the Pack. —RUDYARD KIPLING

Soon shall Damascus cease to be a city,
And shall lie in ruins forever.
Its cities shall be given up to flocks,
And they shall lie down there with none to disturb.
Ephraim shall lose her bulwark,
And Damascus her sovereignty;
And the rest of Aram shall perish,
Like the Israelites shall they be,
Is the oracle of Jehovah of hosts.

—ISAIAH

Beginnings of Colonial Empires

About the year 1500 Europe was greatly in need of a sea route to Asia. The conquests of the Ottoman Turk, culminating in the capture of Constantinople in 1453, cut off routes over which trade between Europe and Asia had passed. In Egypt heavy dues were exacted. Further more, trade with the East was monopolized by Venice and other Italian cities. Such goods as came through to Europe were burdened with charges which placed most of them out of reach of any but the rich.

Shut out of the land trade to the East by exclusive policies and high tolls and spurred on by the hope of high profits, adventurous spirits began to speculate concerning a sea route to India and the East. Prince Henry of Portugal, "the Navigator," who died in 1460, laid a scientific foundation for the period of discovery which was literally to remake the world. Europe had waited

Till a voice, as bad as Conscience, rang interminable changes

On one everlasting Whisper day and night repeated—so:

"Something hidden. Go and find it. Go and look behind the Ranges—

Something lost behind the Ranges. Lost and waiting for you. Go!"

The Portuguese, beginning their quest for a sea route around Africa to India, had discovered, in 1429, Cape Nun; in 1432, the Azores; and in 1435, Cape Verde. By 1480 they had reached the mouth of the Congo and two years later had rounded "Capo das Tormentas," now known as the Cape of Good Hope. Finally, in 1496, Vasco da Gama had succeeded in reaching Calicut.

But the awakening life of Europe was not confined to the search for a sea route around Africa. Columbus, seeking India by a western route in 1492, had discovered a new world. Balboa, in 1513, had discovered the Pacific Ocean, and Magellan, sailing through the straits which bear his name had circumnavigated the globe,¹ (1519-1522). Through the sixteenth and seventeenth centuries explorers and conquerors carried on their work. The Cabots explored parts of North America for England, Cabral touched the coast of Brazil, Cortez conquered Mexico, and Pizarro crushed the Inca civilization in Peru. The English and the Dutch disputed the supremacy of Spain. French missionaries and traders traced the St.

¹ Compare with this event the encircling of the earth by American flyers in 1924.

Lawrence to the Lakes and followed the Mississippi to the sea, leaving everywhere permanent traces of French life.

But these events anticipate. In Europe, about the year 1500, great changes were under way. The Renaissance was revolutionizing intellectual life. The Reformation was liberating religious thought. Gunpowder was creating new methods of warfare, and printing was disseminating knowledge to a degree never before possible. Upon these changed conditions discoveries and explorations reacted with far-reaching results. Europe suddenly came into a vast heritage from beyond her borders. What was she to do with these new possessions. Colonial empires began to take shape and the nations of Europe to determine their commercial policies in accordance with these changed conditions.

Spain and Portugal as Colonial Powers

The nations first in the race for colonial advantage were Spain and Portugal. The Pope's division of the European world between those two powers, by the Treaty of Tordesillas, in 1494, affords an illuminating glimpse of the age. To Portugal was granted all newly discovered territory east of a line drawn from pole to pole, 370 leagues west of Cape Verde; Spain was to receive lands to the west of it. Although many disputes ensued over the exact location of the dividing line, Brazil fell to Portugal and the remainder of the New World to Spain. Portugal held India and the Spice Islands, Spain claimed the Moluccas as a result of the expedition of Magellan, but in 1529 this claim was withdrawn and the boundary between the Portuguese and Spanish spheres in the East was fixed at 17° E. The Philippines, however, were by arrangement retained in the Spanish sphere.

Restriction and monopoly characterized both the Span-

ish and the Portuguese colonial régimes. Political control or title, however unsubstantial, was deemed to give a nation the right to exclude foreigners from trade.² "The second decade of Spain's colonial administration," says Bourne,³ "opens with the establishment at Seville, the mercantile capital of Castile, of the Casa de Contractacion, 'at once a board of trade, a commercial court, and a clearing-house for the American traffic.' In its earliest form this body consisted of a treasurer, an auditor, and a factor or manager. The casa, or house, was to contain ample stores of the commodities to be shipped to the Indies, and its officials were to exercise close supervision over all commerce with the Indies, Barbary, and the Canaries, to select proper captains for the ships, and to keep themselves informed regarding conditions in the Indies and ways of extending trade." The Casa de Contractacion was, in fact, the neck of the bottle of Spanish trade with the new world. Vessels sailed in fleets and were permitted to land only at selected ports. Between 1535 and 1579 ships were not allowed to ply between Spain and Buenos Aires. Thereafter, the policy varied.⁴ Goods reaching Buenos Aires (except contraband) were carried by the fleet to Porto Bello on the Isthmus of Panama and thence, through Peru, down into the valley of the River Plate. Even the trade of the Philippines with new Spain was restricted because of "the fear of the competition of Chinese silks with those of Spain in the Lima market."⁵ Briefly, Spanish policy was based on the "closed door" and aimed at monopoly. It invited evasion, smuggling, and piracy.

² Keller, A. G., *Colonization*, 1908, Chap. vii; Bourne, E. G., *Spain in America*, 1906, Chap. xix.

³ Bourne, E. G., *op. cit.*, p. 223.

⁴ *Ibid.*, pp. 290, 291.

⁵ *Ibid.*, p. 289.

Portugal's trade with her colonies was a state monopoly. Not only were foreigners excluded, but her own citizens were restrained from engaging independently in trade with her possessions.⁶ Just as the precious metals formed the chief object of Spanish trade in America so the Portuguese sought in the East dyes, drugs, and spices. The able leader Albuquerque (1453-1515) achieved there marked success,⁷ so that in the sixteenth century Portugal's colonial achievements bore the appearance of greatness. Before the Dutch and English had begun to dispute her control, her possessions extended along the east and west coasts of Africa, the coasts of Malabar, Persia, and Ceylon, to the Malay Archipelago and Indo-China and even to the coast of China itself, and to Brazil. It should be noted, however, that her control did not extend far into the interior. Even before Albuquerque's death there was evidence of a decline until in 1600 her colonial prestige was on the wane. Her monopoly of the East was broken in the Spice Islands by the Dutch and in India by the English.

Rise of the Netherlands

The Netherlands were the first to dispute the trade monopolies of Spain and Portugal.⁸ Religious zeal and a desire for political freedom were, no doubt, factors in the creation of the Dutch Republic.⁹ But equally prominent was the desire of the shipping and trading interests of the Netherlands to share in the rich profits of commerce with distant lands. The colonial commerce of the Dutch was controlled by great private companies, the East India Company organized in 1602 and the Dutch West India

⁶ Keller: *op. cit.*, Chap. iii and iv.

⁷ Keller: *op. cit.*, page 106.

⁸ Day, Clive, *A History of Commerce; The Dutch in Java.*

⁹ Motley, John Lothrop, *The Rise of the Dutch Republic.*

Company organized in 1621. The latter "was really a corporation of privateers."¹⁰ The character of the company can be realized from the fact that it actually opposed peace between the Netherlands and Spain; in its remonstrance of 1633 it went so far as to say¹¹ that "the services desired of it 'for the welfare of our Fatherland and the destruction of our hereditary enemy could not be accomplished by the trifling trade with the Indians, or the tardy cultivation of uninhabited regions, but in reality, by acts of hostility against the ships and property of the King of Spain and his subjects.'"

Through the activities of these companies the Dutch waged their war against Spain and Portugal. They captured the silver galleons of Spain and carried on contraband trade. By 1700 their control in the East extended to a part of the India coast, Ceylon, Malacca, and the Spice Islands. In the New World they founded New Netherlands on the Hudson.

The English and the French

The Dutch monopoly was in turn attacked by the English. It was against the Dutch that the Navigation Acts of Cromwell (1651) were directed. But England's struggle for commercial supremacy was far from being confined to a war with the Netherlands. Drake, Hawkins, and other sea adventurers had contested the monopoly of Spain in the New World. In 1588 the English navy defeated the Spanish Armada—an achievement marking the beginning of England's supremacy on the sea. English companies explored and settled the coast of North America.

The stage cleared itself for the great eighteenth century struggle between England and France for the possession of India and North America. The results of the Seven

¹⁰ Day, Clive, *A History of Commerce*, p. 192.

¹¹ *Ibid.*, p. 192.

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Years' War (1756-1763) extended far beyond Europe. In America, where the conflict was known as the French and Indian War, it wrested from France her possessions on the St. Lawrence and her control of the Mississippi. In India, it left France in possession of only a foothold at several points on the coast.¹²

Throughout the centuries of struggle for colonies the commercial policies of mercantilism determined the acts of the contending governments. Colonies were regarded as appendages to the mother country to be exploited exclusively by her. Governments attempted to achieve their purposes by prohibitions, monopolies, exclusive navigation laws, and even by wars. They accepted without reservation the policy of the "closed door" which to-day, although shaken and discredited, still holds too large a place in the policies of states.

Check upon the Old Colonial Policies

Two widely separated events occurring in the year 1776 were destined to give effective check to the old colonial methods and policies: the one was the Declaration of Independence from British rule by the thirteen colonies on the Atlantic seaboard of North America; the other was the publication by Adam Smith of "an Inquiry into the Nature and Causes of the Wealth of Nations." Each of these events, as has been said,¹³ was but a part of a tendency affecting every phase of life, away from authority and restriction and toward individual freedom and equality. If this movement did not destroy, it at least gave decisive check to the old colonial system.

In the short space of three centuries Spain fell from

¹² Woodward, W. H., *The Expansion of the British Empire*; Seeley, J. R., *Expansion of England*; Macaulay, Thomas Babington, *Essay on Clive*.

¹³ See Chap. i, *supra*.

the position of the greatest to the least important of the colonial powers. She was, in the first place, a victim of her own methods in the hands of others and of her failure to keep pace with the liberalizing influences of the nineteenth century. Her rise and fall within a few centuries should serve as a warning to nations seeking to achieve success by means of exclusive or narrow commercial policies.

Partly because of inherent defects in her colonial system and partly because contraband trade and smuggling were destroying her monopoly, Spain's colonial policy was revised and to some extent liberalized about the middle of the eighteenth century. The value of freer intercourse with colonies was established by the capture, in 1762, of Havana by the British who during their control removed many restrictions in trade, with resulting prosperity to the colony. Spain's effort, however, to reform her colonial policy came too late. At home the government lacked vigor. In the colonies the people had lost faith in Spain and, influenced by the doctrines of liberty and freedom spread by the French and American Revolutions, had determined to govern themselves. Between the years 1810 and 1825 Spain lost the greater part of her colonies in the new world. At the end of the period there remained only Cuba and Porto Rico. The revolt of the Spanish colonies created great concern among the conservative statesmen of Europe, and there, later, Metternich sought to use the Quadruple Alliance and the Holy Alliance to restore those possessions to Spain. The autocracies of Europe acted in concert to overthrow all liberal movements and to regain control. Their efforts were temporarily successful on the European Continent, but when it was proposed to apply them to the revolting Spanish colonies, opposition was encountered in two quarters.

In the first place, the step was opposed in Great Britain.

British traders had obtained an increasing share of the Spanish colonial trade and the complete removal of the colonies from Spanish control opened a wider field for English commercial activities. For material reasons, therefore, the commercial classes of Great Britain were opposed to the restoration of Spanish power in the New World. Furthermore, there was a political sentiment in England in favor of the revolting colonies which could be effectively used to put through the policy which the British Foreign Minister, Canning, had in mind. He opposed Metternich's project and declared in his boastful phrase that he had called into existence a new world to redress the balance of the old.

In the second place, President Monroe issued in 1823 his famous message declaring America's opposition to the expansion of autocracy to this Western Hemisphere and stating that the continents of the New World should no longer be considered the objects of future colonization by European powers. This Monroe Doctrine, together with England's attitude, effectively blocked all efforts of the reactionaries of Europe to restore to Spain her colonies in the New World.¹⁴

The other colonial powers were also influenced by the new conceptions beginning to affect commercial policies. After the wars of Napoleon enthusiasm for colonies cooled. Colonies were regarded as burdens. The thirteen British colonies in North America had become the United States of America. Other settlement colonies were expected to follow a similar course. Like the Spanish colonies,

¹⁴ During the period when Spain's colonies were in revolt, the United States purchased Florida from Spain (1819). The other possessions of Spain in the New World were lost as a result of the Spanish-American War. Cuba became independent, and Porto Rico was annexed by the United States. As a result of the same war Spain sold the Philippines and, in the year following the Treaty of Paris (1898), she sold to Germany the Caroline, Marshall, and Ladrone Islands.

Brazil became independent. Both the British and the Dutch liberalized to some extent their colonial policies. It seemed as if exclusion and monopoly were about to disappear. Only France continued an aggressive policy of colonial acquisition. She had lost colony after colony, and the Congress of Vienna had left her only a few comparatively unimportant possessions. Early in the nineteenth century, however, she began again, in spite of some opposition at home, to climb toward the position of a leading colonial power. A punitive expedition sent to Algeria about 1830 became the beginning of a long struggle for the possession of that country. Napoleon III increased France's external holdings but failed in his chief project in Mexico.

Revival of Interest in Colonies

Then, about the time Stanley emerged from Africa (1877), began that extraordinary revival of interest in colonies which has swept on with increasing force to our own day. It came for many reasons. National sentiment was uniting the German and the Italian states, and national pride as well as desire for power prompted statesmen to seek new possessions. The growth of industry—the progress of mechanical invention and the development of business organization which made possible large-scale production—the necessity for markets, the accumulation of capital seeking investment, the improvements in communication and transportation, all tended to add new motives for acquiring colonial possessions. The economic conquest of the non-European world¹⁵ was destined to prove a task involving greater effort than had the first conquest and to have more far-reaching consequences.

When the reawakening came, Spain held sovereignty

¹⁵ See Chap. i, *supra*.

over only a shadow of her former empire. Portugal claimed wide expanses of territory in Africa to which other powers did not concede her right. The Netherlands still held the Spice Islands. France had a respectable empire, with footholds on the coasts of Africa from which she later pushed into the hinterland. Great Britain had under her control a substantial part of her present "farflung empire." Belgium, Germany, Italy, Japan, and the United States, each of which became subsequently a colonial power, had at this time no possessions at all.¹⁶

Nations looking over the earth for opportunities for colonial expansion found the Western Hemisphere closed to them by the Monroe Doctrine. Had it not been for the policy of the United States, it cannot be doubted that spheres of influence would soon have been marked out in Latin America by the land-hungry powers of Europe. Some day the archives of Latin-American countries will no doubt unfold stories of many attempts to gain spheres of influence within their borders by powers which in turn directed their attention to Asia. There, they began to define their "spheres" in utter disregard of the rights and desires of the yellow and brown men, while beginning to partition Africa among themselves.

Present Colonial Possessions

This movement is a chapter of history of which the white race cannot be wholly proud, although it may be viewed as a necessary stage in the progress of the world. It left about one-half of the earth's surface in the colonial status and much of the remainder in varying degrees of dependency.¹⁷ It also revived seemingly dying interest in the policy of the "closed door" (the policies of assimilation and of preferential tariffs). Its effect in part is shown

¹⁶ Exception: Alaska, held by the United States.

¹⁷ See Chap. i, *supra*.

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CLASSIFICATION OF DOMINIONS, COLONIES, PROTECTORATES AND
MANDATES ACCORDING TO THE TARIFF SYSTEM

Country	DEPENDENCIES		
	Assimilated	Preferential	Open-Door
BELGIUM			Belgian Congo Ruanda and Urundi ¹
FRANCE	Algeria Tunis ² French Indo- China ² Madagascar Gaboon Reunion Islands Martinique Guadeloupe French Guiana New Caledonia ²	Senegal French Guinea French Oceania St. Pierre and Miquelon	French Morocco French Somaliland Dahomey Ivory Coast French India Equatorial Africa ³ New Hebrides (Anglo- French Condomin- ium) Kamerun ¹ Togo ¹
GREAT BRITAIN		Canada Australia ⁴ New Zealand ⁶ Union of South Africa ⁷ Trinidad British Guiana Jamaica Barbados Leeward Is. Windward Islands British Hon- duras Bahama Islands Cyprus Western Samoa ⁹	British India Newfoundland ⁵ Aden Ceylon Straits Settlements Federated Malay States ⁸ Protected Malay States Hong Kong Wei-hai-wei (Leased from China) Nigeria ⁸ Gold Coast Sierra Leone Gambia Kamerun ¹ British Somaliland Kenya and Uganda Zanzibar and Pemba Nyasaland Tanganyika ¹ Anglo-Egyptian Sudan

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CLASSIFICATION OF DOMINIONS, COLONIES, PROTECTORATES AND
MANDATES ACCORDING TO THE TARIFF SYSTEM (*Continued*)

Country	DEPENDENCIES		
	Assimilated	Preferential	Open-Door
GREAT BRITAIN (<i>continued</i>)		Southwest Africa ¹⁰ Mauritius	Gibraltar Malta British North Borneo Brunei Sarawak Tonga Islands Solomon Islands Gilbert and Ellice Is. New Guinea ¹¹ Seychelles Islands Falkland Islands Bermuda St. Helena
ITALY		Eritrea Somalia ² Libia	Ital. Northern Somali- land Rhodes Dodecanese Islands
JAPAN	Formosa Sakhalin Korea Minor Islands		Kwantung
NETHER- LANDS			Dutch East Indies Curaçao Dutch Guiana
PORTUGAL		Mozam- bique ² Angola ² Cape Verde Islands ² Portuguese India Timor Sao Thomé Principe ²	

CLASSIFICATION OF DOMINIONS, COLONIES, PROTECTORATES AND
MANDATES ACCORDING TO THE TARIFF SYSTEM (*Concluded*)

Country	DEPENDENCIES		
	Assimilated	Preferential	Open-Door
SPAIN		Fernando Po ² Spanish Guinea Rio de Oro	Spanish Morocco
UNITED STATES		Philippines Virgin Islands Guam	American Samoa Canal Zone

¹ Mandated territory.

² Some differential export duties.

³ Except Gaboon.

⁴ Papua and Norfolk Islands under Australia are open-door colonies.

⁵ 25 per cent reduction of duty on imports from Jamaica.

⁶ Cook Islands are in the relation of an assimilated colony to New Zealand.

⁷ Northeastern Rhodesia lies within the basin of the Congo and maintains the open door in accordance with the General Act of the Conference of Berlin, 1885.

⁸ Differential export duty on tin ore.

⁹ Mandate to New Zealand.

¹⁰ Mandate to South African Union.

¹¹ Mandate to Australia.

in the accompanying table (pages 209-211) adapted from the report of the United States Tariff Commission on "Colonial Tariff Policies."

The "closed-door" and "open-door" policies find their simpler manifestation in tariff schedules. In this chapter the "closed-door" tariff policies—assimilation or preferential—will be discussed as applied in the colonies of Spain,

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Portugal, Italy, Japan, and France.¹⁸ In Chapter VIII the "open-door" tariff policies in the colonies of Great Britain,¹⁹ Belgium, the Netherlands, and Germany will be considered.

Spain

Spanish possessions to-day are of limited extent and of comparatively small importance. They include the Canary Islands, possessions in the Gulf of Guinea, including the territory known as Rio Muni on the African coast and several islands in the Gulf; zones of influence in Morocco and certain possessions in North Africa, the largest of which is called Rio de Oro.

The Canary Islands, controlled by Spain since the fifteenth century, are commercially the most important. Their population is approximately a half million. Politically or constitutionally the islands form a province of Spain and are under a governor appointed by the King. Their chief products are fruit and vegetables. They are fortunately located and supply the European market with these products.

Opposite Spain on the coast of Morocco are two Spanish

¹⁸ Conditions exist which justify preferential tariff treatment. They, however, are exceptional, and if nations were to accept fully the policy of equality of commercial opportunity there would be no difficulty in agreeing on the exceptions. A possible test may be suggested. Where natural trade channels already exist preferences may be granted, particularly if a small political unit is economically dependent on a larger one, *e.g.*, between Spain and Portugal, France and Algeria, United States and Cuba. But preferences and reciprocity agreements are not justified when they are designed to divert natural channels of trade, to create artificial commercial alignments, *e.g.*, preferences between Great Britain and Australia; between United States and Brazil; United States and the Philippines; France and Indo-China.

¹⁹ In Chapter v the self-governing Dominions whose tariff policies are analogous to the closed-door policy have been classed with nations which act in violation of the unconditional most-favored-nation principle.

cities, Melilla and Ceuta, which are also administered as a part of Spain. They are free ports and handle a considerable portion of the trade which reaches the hinterland.

Of the Spanish possessions in the Gulf of Guinea, Fernando Po is by far the most important. It has been developed rapidly in the last twenty years. The Spanish colony on the mainland, known as Rio Muni, presents a marked contrast by reason of its lack of development. The coast is low and unhealthy, little capital has ventured there, and no development of harbors, railroads, or even of roads themselves has taken place. Such capital as the Spanish Government has had to invest, or has been able to divert to colonies, has been applied in Fernando Po to the development of the cocoa industry. These possessions of Spain illustrate how important is capital to the development of new countries.

The Spanish region in Northern Africa, known as Rio de Oro and often spoken of as the Spanish Sahara, is of comparatively small importance commercially. It is arid and rocky, but a few oases exist in the interior. In 1912 France and Spain entered into a treaty for the maintenance of peace and good government in the Moroccan Empire and the country has been divided between them. Toward the end of 1924, however, Spain withdrew her troops from a considerable part of the area which she had invaded but had not subdued.

Spain's policy toward her colonies has been influenced both by finances at home and by the traditions of past centuries. She has not been able to undertake any extensive program of colonial development because of the lack of funds. The tendency of her policy has been to grant preferences in both import and export tariffs. Before she lost Cuba and the Philippines she granted to Spanish goods and Spanish vessels preferential treatment in those

colonial markets. As a matter of general policy, however, she has not maintained preferential tariffs in the Canary Islands and the open door is maintained by treaty in the Spanish zone of Morocco.

In the Gulf of Guinea possessions preferences are found in favor of both Spanish goods and Spanish ships. The export taxes, for example, are 8 per cent when the products are shipped in foreign vessels to foreign ports, 5 per cent when shipped in Spanish vessels to foreign ports, or in foreign vessels to Spanish ports, and free when shipped in Spanish vessels to Spanish ports. In the preamble of a tariff enacted in 1907 for Fernando Po, the following statement suggests the principles which guided in the determination of Spanish colonial policy at that time:

Considering that the fundamental basis of the new fiscal system should be as follows: Establishment of the duty in a specific form—that is, according to weight and measurement, so far as may be feasible; freedom from duty for articles classed as of prime necessity, as well as for those which may contribute to promote the material welfare and economic life of the colony, fixing of increased duties upon articles the consumption of which may prove harmful, as for example, alcoholic drinks; exemption from export duties of fruits and products, the trade in which, being just begun, it is desirable to encourage; determination of the proper duties upon the exportation of products which especially constitute the riches of Spanish Guinea; adoption of the system of two columns only, the one applicable to foreign commerce or to that under a foreign flag, and the other relating to domestic commerce carried on under the national flag, and finally that domestic commerce as well as shipping shall be protected by a proper differential margin.

Considering, lastly, that the spirit which should shape the new tariff ought to be moderate in its aims as to revenue, both because of the economic situation of the colony, still very weak at its entrance into commercial life, and because it is absolutely necessary, by great caution in imposing duties and taxes, to foster

the improvement and prosperity of the colony in its various relations and aspects. . . .

Spain's preferential policy at the present time would seem to be directed more to the encouragement of Spanish shipping than to colonial trade. Of her colonial policy in 1921 the United States Tariff Commission's report on "Colonial Tariff Policies" said:²⁰

The policy of Spain is to enforce differential tariffs in her colonies and to give preferences to colonial products in the home market. The general principle has indeed been expressed in legislation that colonial products shall enter Spain free, but this principle has been applied only gradually in a succession of enactments which determine what articles shall be recognized as colonial products. In 1918 a list of products of Spanish Guinea which enter Spain free—a list which had already been extended to the other African possessions—was extended also to the Spanish zone in Morocco; so that at the present time the uniformity of the rules applicable to imports from the possessions is broken only by the separate legislation for the Canary Islands and in reference to the coffee and cocoa of Fernando Po.

No uniformity has as yet been introduced into the colonial tariffs. The general policy contemplates the free admission of Spanish goods, but this policy is modified in adaptation to the fiscal needs of the possessions. Spanish goods enter the "free ports"—the Canary Islands, Melilla, and Ceuta—on payment of the usual fiscal customs and port dues except that Spanish sugar receives a special exemption in the Canaries. Treaty limitations prevent the application of differential rates in Morocco, though it may be noted that goods (whether foreign or Spanish) entering Morocco by way of Melilla pay a rate of only 5 per cent instead of 12½ per cent. Likewise the policy is to grant differentials in the export duties levied in the colonies, but this also can not be applied in Morocco, and the free ports levy no export duties. The only points in which there is entire uniformity are that the direct trade between Spain and its possessions is reserved to Spanish vessels as coasting trade and that all the tariff preferences are granted only to merchandise transported directly and in Spanish vessels.

²⁰ See p. 539.

Portugal

Portugal's importance as a colonizing power to-day lies in her control, nominally at least, of large areas in Africa. She is, however, unable to develop them, and other powers claim, as it were, reversionary rights in them. For this reason their ultimate disposition constitutes a problem in world politics.

Portugal's colonial experience, furthermore, reveals the effect of the policies of state monopoly and exclusion and demonstrates that mere exploitation cannot be made the basis of a permanent colonial empire.

Portugal's present possessions may be divided into three groups, as follows: (1) Azores and Madeira Islands, which for many purposes are treated as a part of Portugal; (2) the Portuguese possessions in Asia, including two small enclaves in India—Goa and Damao; a portion of the Island of Timor and an Island near Hongkong off the Chinese coast, Macao (in all, these Asiatic possessions cover less than 9,000 square miles and are of comparatively little commercial importance except for transit trade); (3) the Portuguese colonies in Africa, including Angola on the west coast of Africa just below the mouth of the Congo, Mozambique in southeast Africa, Sao Thomé and Príncipe, the cocoa islands in the Gulf of Guinea, Portuguese Guinea, and the Cape Verde Islands. These African possessions cover almost a million square miles and have a population of over seven and one-half millions.

The largest of these Portuguese possessions is Angola. Its chief products are coffee, rubber, sugar, and vegetable oils. The trade is very largely in the hands of the Portuguese National Navigation Company, said to be controlled by British capital.

Mozambique is important in part because it provides an outlet to the sea for a great portion of British South

Africa. The great Zambesi River flows through its territory. It has a coast line of over 1,400 miles and its harbor at Delagoa Bay is one of the best on the eastern coast of Africa. The development of the economic resources of Mozambique is largely in the hands of two companies holding royal charters and now operated chiefly with British and French capital.

The Cape Verde Islands are important in that they are a point of call for ships moving north and south along the coast of Africa. The Islands of Sao Thomé and Principe, while producing a variety of tropical products, derive their prosperity primarily from the production of cocoa.

Portugal does not have a uniform commercial policy in her colonies. Madeira and the Azores are treated as a part of Portugal and there is free trade between them and the mother country. That portion of Angola lying north of the River Logé is within the conventional basin of the Congo and is, therefore, subject to the open-door provisions of the General Act of the Conference of Berlin.²¹ Macao is a free port. The remaining of the possessions, both those under concession companies and those administered by the Portuguese Government direct, have preferential export and import tariffs. Preferences are granted in the import tariffs of Portugal to colonial goods when shipped in Portuguese ships. Preferences are granted in the import tariffs of the colonies to Portuguese goods when shipped in Portuguese ships, and foreign goods, nationalized in Portugal, are also entitled to a colonial preference, serving to encourage trans-shipment trade. Preferences are also granted in colonial export taxes. Portugal has also entered into a number of bilateral commercial treaties, most of which provide that products of

²¹ See 277.

the Portuguese colonies, re-exported from the mother country, shall not be subjected in any foreign country to duties higher than those paid by the products of Portugal. This provision, like others in Portugal's commercial policy, indicates a solicitude for the maintenance of her shipping. The most-favored-nation clause in Portuguese commercial treaties usually reserves to Portugal the right to give special favors both to Spain and to Brazil.

The ultimate disposition of the Portuguese colonies has been and is a question of prime importance to the world. Portuguese statesmen, themselves, have realized that the resources of their country make it impossible for it to develop the vast territories in Africa now under its political control. Portugal's dependence, both commercially and financially, upon Great Britain has become so increasingly evident that it has been seriously proposed by her statesmen that the colonies be sold. Johnston has said: ²²

. . . In 1898, when the unsettled state of Africa and the rivalry between Britian, Germany, and France made it advisable to forecast an allotment of the Portuguese colonies, should they slip from the grasp of Portugal or be offered for sale, an agreement was entered into between Britain and Germany partitioning the Portuguese African possessions into spheres of influence.

The disposition of the Portuguese colonies was one of the serious issues in the rivalry between Great Britain and Germany before 1914. Just before the outbreak of the war the two countries reached an understanding as to their respective spheres of influence in these colonies. The agreement for their disposition was negotiated in behalf of Germany by Prince Lichnowsky, then the German ambassador at London, but, because of the refusal of the

²² Johnston, H. H., *The Colonization of Africa, 1913*, p. 115. See also Gibbons, Herbert Adams, *New Map of Africa*.

German Government to permit the publication of the agreement, it was not ratified by Great Britain. Lichowsky has said:²³

In the year 1898 a secret convention had been signed by Count Hatzfeldt and Mr. Balfour, which divided the Portuguese colonies in Africa into economic-political spheres of interest as between us and England. As the Portuguese government possessed neither the power nor the means to open up its extensive possessions or to administer them suitably, it had already at an earlier date entertained the idea of selling them and thereby putting its finances on a sound basis. An agreement had been reached between us and England, delimiting the interests of the two parties. Its value was enhanced by the fact that Portugal, as is well known, is completely dependent upon England.

The object of the negotiations between us and England which had begun before my arrival, was to revise and amend our treaty of 1898, which contained a number of impracticable provisions, even as regarded geographical delimitation. Thanks to the conciliatory attitude of the British government, I succeeded in giving to the new treaty a form which entirely corresponded to our wishes and interests. All Angola, as far as the 20th degree of longitude, was assigned to us, so that we reached the Congo territory from the south. Moreover the valuable islands of San Thomé and Príncipe, which lie north of the equator and therefore really belonged to the French sphere of interest, were allotted to us—a fact which caused my French colleague to enter energetic but unavailing protests.

Further, we obtained the northern part of Mozambique; the Licango formed the boundary.

Originally, at the British suggestion, the Congo State also was to have been included in the treaty, which would have given us a right of preëmption and would have enabled us to penetrate it economically. But we refused this offer, out of alleged respect for Belgian sensibilities! Perhaps the idea was to economize our successes? Furthermore, as regarded the practical execution of the real but unexpressed purpose of the treaty—

²³ International Conciliation, June, 1918, No. 127, *The Lichnowsky Memorandum*, pp. 281-285.

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the actual partition at a later date of the Portuguese colonial possessions—the new formulation, as compared with the old, offered us important advantages and represented a distinct advance. Thus it was provided that in certain cases we should be authorized to intervene in the territories assigned to us for the protection of our interests. These conditional clauses were so broad that it was really left to us to decide whether “vital” interests were concerned; so that, Portugal being completely dependent on England, it was necessary only to cultivate further our relations with England in order, later on, with English assent, to realize our respective intentions.

The remaining Portuguese possessions in Africa were to go to Great Britain. The agreement was never ratified.

Italy

Italy, one of the youngest of the modern nations, occupies a territory whose traditions stretch back to antiquity. The Roman Empire, the Papacy, and the history of the Italian states suggest the complex background upon which modern Italy rests. Wars, oppressions, legal systems, literature and art, commerce in its varied phases—all these have for centuries operated to determine the character of the people who now form the population of the Italian peninsula.

Italy, like Germany, was late in entering the race for colonial empire. As most of the important areas of the earth had been preëmpted by other nations she had to content herself with barren and unproductive territory along the Red Sea. In 1869, the year of the opening of the Suez Canal, an Italian steamship company purchased the port of Assab, but until 1880 little was done toward occupying the region. Shortly after that time treaties were made with certain local chiefs, with Abyssinia, and with Great Britain and France. In 1890 possessions thus acquired on the Red Sea were named the colony of Eritrea.

Italian imperialism, under the leadership of Crispi, pressed on into Somaliland on the Indian Ocean.

In 1896 Italian troops moved toward Abyssinia, which Italian statesmen had long looked upon as a possible field for colonization. They were surprised to find the troops of Menelik equipped with modern firearms and munitions, and were disastrously routed at Adowa. This victory of the Africans over a European state gave a decided check to colonial ambition in Italy.

Italy's next colony came to her as a result of her war with Turkey in 1911-12. The Italians occupied Tripolitania and Cirenaica and named them Libia. The occupation of the coast cities was effected without difficulty, but the subjection of the desert tribes is still not complete.

In this same war, Italy occupied the Island of Rhodes and the Dodecanese, and thereafter remained in possession. The Treaty of Sèvres provided for the annexation of these territories by Italy, but Greece refused her assent. Italy and Greece then negotiated a separate convention under which the smaller islands were immediately ceded to Greece and Rhodes fifteen years after the return of Cyprus to Greece by Great Britain. Later, Italy repudiated this agreement, and in the Treaty of Lausanne, signed July 24, 1923 (Pt. I, Art. 25) Turkey renounces in favor of Italy all rights and title over Rhodes and the Dodecanese.²⁴

Commercially the Italian colonies are of little importance. Their exports consist of tropical and desert products, and the needs of the population for manufactured articles, imported in return, are limited. The fiscal policy of the colonies has been determined more by trans-shipment trade and revenue than by the needs of Italian commerce. Practically all of the commercially-developed part of Ital-

²⁴ See "Peace Terms with Turkey," in *Current History*, New York, October, 1923; "The East After Lausanne," in *Foreign Affairs*, Sept. 15, 1923.

ian Somaliland falls within the conventional basin of the Congo fixed by the Berlin Conference of 1885. But Italy, in defiance of the open-door provisions of that act, has established limited preferential duties in favor of her own goods. Preferences in favor of Italian goods also appear in both the import and export schedules of Eritrea. In Libia the chief preference results from a systematic undervaluation of Italian as compared with foreign goods. Colonial products receive preferences in Italian markets.

Japan

Although one of the youngest of the colonial powers, Japan has acquired since the Restoration (1868) more than 119,000 square miles of territory, an increase of 85 per cent in the area of the Japanese Empire, now extending over 260,739 square miles.

The expansion of the Japanese Empire began with the assimilation of a number of small outlying islands. The Kurile Islands were acquired in 1874, the Bonin Islands in 1876, and the Loochoo Islands in 1879. Formosa and the Pescadores were ceded by China at the conclusion of the Chino-Japanese War of 1894-95, and the southern half of the Island of Sakhalin was ceded by Russia at the conclusion of the Russo-Japanese War in 1905. With respect to the northern half of Sakhalin the following statements were made by Baron Shidehara, on behalf of the Japanese Government, at the Sixth Plenary Session of the Conference on the Limitation of Armament (February 4, 1922):

The occupation of certain points in the Russian Province of Sakhalin is wholly different, both in nature and in origin, from the stationing of troops in the Maritime Province. History affords few instances similar to the incident of 1920 at Nikolaievsk, where more than seven hundred Japanese, including women and children, as well as the duly recognized Japanese Consul and

his family and his official staff, were cruelly tortured and massacred. No nation worthy of respect will possibly remain forbearing under such a strain of provocation. Nor was it possible for the Japanese Government to disregard the just popular indignation aroused in Japan by the incident. Under the actual condition of things, Japan found no alternative but to occupy, as a measure of reprisal, certain points in the Russian Province of Sakhalin in which the outrage was committed, pending the establishment in Russia of a responsible authority with whom she can communicate in order to obtain due satisfaction.

Nothing is further from the thought of the Japanese Government than to take advantage of the present helpless condition of Russia for prosecuting selfish designs. Japan recalls with deep gratitude and appreciation the brilliant rôle which Russia played in the interest of civilization during the earlier stage of the Great War. The Japanese people have shown and will continue to show every sympathetic interest in the efforts of patriotic Russians aspiring to the unity and rehabilitation of their country. The military occupation of the Russian Province of Sakhalin is only a temporary measure, and will naturally come to an end as soon as a satisfactory settlement of the question shall have been arranged with an orderly Russian Government.²⁵

Mr. Hughes on behalf of the American Government replied (in part):

The American Delegation has heard the statement by Baron Shidehara and has taken note of the assurances given on behalf of the Japanese Government with respect to the withdrawal of Japanese troops from the Maritime Province of Siberia and from the Province of Sakhalin. The American Delegation has also noted the assurance of Japan by her authorized spokesman that it is her fixed and settled policy to respect the territorial integrity of Russia, and to observe the principle of nonintervention in the internal affairs of that country, as well as the principle of equal opportunity for the commerce and industry of all nations in every part of the Russian possessions.

These assurances are taken to mean that Japan does not seek, through her military operations in Siberia, to impair the rights of the Russian people in any respect, or to obtain any

²⁵ *Conference on the Limitation of Armament, Washington, Nov. 12, 1921, to Feb. 6, 1922, p. 346.*

unfair commercial advantages, or to absorb for her own use the Siberian fisheries, or to set up an exclusive exploitation either of the resources of Sakhalin or of the Maritime Province.²⁸

On January 21, 1925, a treaty between Russia and Japan was signed at Peking. For the details of its provisions the text of the treaty and supplementary memoranda and protocols should be consulted. Its terms include the restoration of diplomatic relations between the two countries; the provision for the military evacuation of northern Sakhalin; and the grants to Japanese of important concessions for the exploitation of oil and coal deposits.

Japan acquired sovereignty over Korea in 1910. She acquired title in 1905, by the Treaty of Portsmouth and the confirmatory provisions of the Treaty of Peking (the "Komura Treaty"), title to the former Russian rights in the Kwantung Leased Territory in South Manchuria, together with railway and other rights extending as far north as Changchun. The Kwantung lease, originally for twenty-five years beginning in 1898, was extended in 1915 to the year 1997. In the agreement of 1915, the date set for the restoration of the South Manchuria Railway to China was 2002.

The territorial possessions of Japan are important both economically and strategically. Formosa (Taiwan), with an area of 13,944 square miles, is, perhaps, best known for its production of camphor. Its most important commercial product, however, is sugar cane, most of which goes to Japan; while its most important export to foreign countries is tea. Korea (Chosen) has an area of 84,000 square miles. Agriculture is the main industry, but crops are restricted by backward methods of cultivation. Rice, wheat, and other grains, beans, tobacco, and cotton constitute the chief crops. Gold is mined in certain regions

²⁸*Ibid.*, p. 348.

and there are considerable deposits of copper, iron, coal, and other mineral products. Sakhalin (Karafuto), almost as large as Formosa, has as its most important resource the herring fisheries. The island possesses large forests of larch and fir trees and important coal deposits besides alluvial gold, iron, pyrites, and oil. The Leased Territory of Kwantung, whose area is 1,300 square miles, is known chiefly for its exports of beans, bean oil, and bean cake. Manchuria is the world's main source for oil beans. Kwantung's commercial importance, however, lies in its position as the southern gateway to the rich region of South Manchuria. Its transit trade has grown enormously in the last ten years.

The minor territorial acquisitions of Japan have been incorporated into the national system and are treated administratively as integral parts of Japan. Japan's colonial tariff policy of assimilation has become effective in Formosa, Sanhalin and Korea.²⁷ In the Leased Territory of Kwantung assimilation is prohibited by treaty. A similar prohibition was enforced in Korea, but only for a period of ten years, dating from its annexation; and assimilation to Japan was effected on August 29, 1920, the day on which the ten-year guaranty expired.

Japan's disposition to adopt the closed door in her colonies is especially significant when considered with respect to those territories on the continent of Asia which she either controls or desires to control.²⁸

France

The French Empire at the present time covers over 4,000,000 square miles and has a population of nearly

²⁷ *I.e.*, Japan applies to these territories her own import tariff. Japan does not use export duties.

²⁸ For a statement of Japan's policy from the Japanese point of view see lectures delivered by Mr. Yusuke Tsurumi at the Institute of Politics, Williamstown, Massachusetts, 1924.

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100,000,000. In Africa it includes, in the north, Algeria, Tunis, and Morocco, with the vast hinterland in the Sahara extending to the Congo; along the west coast Senegal, Mauritania, French Guinea, the Ivory Coast, Dahomey, and the major part of what were the German Kamerun and Togo; on the Red Sea a part of Somaliland; and southeast of Africa the important island of Madagascar.

Under a mandate France controls Syria, where, for many years, French influence and culture have been dominant. Her possessions in India now consist of five small enclaves; but Indo-China, which has gradually been extended at the expense of neighboring peoples,²⁹ is an important possession with approximately 17,000,000 inhabitants. The most important French possession in Oceania is New Caledonia. The French possessions in America consist of St. Pierre and Miquelon, Guadeloupe, Martinique, and French Guiana. Thus, France, as a colonial power, is second only to Great Britain.

The aim of the French colonial tariff policy adopted in 1892 is assimilation. This is held to mean the establishment of free trade between France and the colonies, and the requirement that foreign goods imported into the colonies shall pay the rates of the French tariff. The policy applies in all its essentials to the following French possessions—Algeria, Indo-China, Tunis, Madagascar, New Caledonia, French Guiana, Gaboon, Reunion, Martinique, and Guadeloupe. Under this system France retains for her industries a decisive preference in commerce against outside competitors. It is true that certain consumption taxes are levied at the ports of some of these colonies, not only upon foreign but also upon French goods.

²⁹Indo-China is a consolidation of several more or less independent kingdoms—Cochin-China, Cambodia, Annam, Laos, Tongking, etc.

But the preference in favor of French goods is sufficient to exert a determining influence upon trade. These colonies, with some products excepted, enjoy free trade in the markets of the mother country.

In a few of her colonies France has not adopted the policy of assimilation but has simply introduced preferential rates in favor of French goods. In this class fall Senegal, French Guinea, French Oceania, and St. Pierre and Miquelon.

France is a party to a number of open-door treaties binding her to maintain a policy of equality of treatment in Morocco, Dahomey, and the Ivory Coast. The Convention of Algeciras of 1906, to which the United States was a party, provides for equal treatment of the commerce of all nations in Morocco. Great Britain and France entered into an open-door agreement concerning certain of their possessions on the Guinea Coast. In one or two French colonies, as for example in Somaliland, the open door is maintained as a matter of policy.

French influence is being exerted against the principle of equality of treatment and the open door. Antagonism to the open-door features of the Algeciras Act is not concealed by French leaders. In 1922, M. Poincaré, the Premier, referred to the possibility of extending preference to Morocco as follows:

The customs duties . . . of Morocco . . . are applicable to all products whatever their origin, and we cannot change this at the present time for the excellent reason that we have not the right to establish differential or preferential tariffs. . . .

We are bound at present by the Act of Algeciras, by international conventions with all the powers of the two worlds. We have not the right to establish in Morocco a particular regime for French or Algerian products.

If in the future, following negotiations, which will certainly

be long and difficult, we recover our liberty, then we can act as M. Thomas wishes.⁴⁰

Russia

If the acquisition of adjoining territory be classed as colonization, Russia is one of the greatest colonial powers. Many serious diplomatic issues of the nineteenth century centered about Russia's ambition for prestige or for territory in the Balkans, at Constantinople, in the Caucasus, in Persia, in Afghanistan, in Turkestan, in Thibet, in Mongolia, and in Manchuria. The influence of Russia under the old régime was thrown on the side of the "closed door" in the effort to monopolize the economic advantages of the areas over which she extended her control. Her tariff policy was assimilation, tempered in some cases by preferential rates and in others, *e.g.*, in Manchuria, rendered impossible by international guaranties of equal treatment.

Danger of the Closed-Door Policy

The revival of interest in colonies, characterizing the last two decades of the nineteenth century as well as the present century, was accompanied by a partial return to the old colonial policies of restriction. The new mercantilism has most plainly expressed itself in preferential tariffs. The growth of colonial empires has led to the extension of discriminatory practices. The closing of the door by means of preferential duties has had both political and economic objects. Of the latter, two are of special interest: (1) the desire to give national industries advantages in marketing their goods in colonies, and (2) the desire to assure to consumers in the mother country a preference in obtaining, if not a monopoly of, essential raw materials.

⁴⁰ *Journal Officiel, Débats Parlementaires*, Chambre des Députés, Nov. 15, 1922, p. 3147.

The existence and growth of import and export preferences throughout the world cannot be matters of indifference to the American people. We are being driven steadily toward a larger and larger participation in foreign trade and finance. Our manufacturing industries have grown strong financially and technically. Although our country is rich in natural resources, we shall have to import increasingly greater quantities of important raw materials, some of which, as for example, jute, rubber, and tin, can be had only from overseas. Exporting, once incidental, has become essential to the prosperity of many of our manufacturing concerns. The markets of tropical colonies, especially, offer large opportunities. These areas, many of them populous, develop manufactures slowly and look to the great industrial nations to supply their need of finished articles. American shipping is also stimulating our interest in the commercial policies of nations. Our enormous private and public loans abroad, our banking institutions with their foreign branches, and American capital claiming its share in the development of the world's resources are forcing international relations.

These conditions make discriminations in trade of more than academic interest to us. Our overseas possessions are limited in extent and our proclaimed policy is to diminish rather than increase them. Viewing the matter for the moment from the point of view of our selfish well-being alone, we have nothing to gain from an extension of the old policy of preference and exclusion in colonial possessions.

The opposition of the United States to the closed-door policy, however, is not purely a policy of selfishness. With its economic strength the United States, if it chose to exert it to force exclusive concessions, would possess advantages over practically every other nation. The closed-door policy does not profit any nation in the long run. It contributes to

misunderstandings and rivalry between nations and should, therefore, be avoided wherever possible. Its adoption implies the use of political power to obtain economic advantage and this means in the end, as history has disclosed, retaliation and even war for the purpose of defending economic claims and vested rights.

Furthermore, the closed door is in conflict with the interest of colonies themselves. It limits their development. It is true that preferences in the markets of the mother country at times benefit colonial producers, but the number of people benefited is always limited and the ultimate gains are not likely to be commensurate with the losses. The closed-door policy as it has been applied has had for its chief objective the profits of certain groups of manufacturers and traders in the mother country. Preferences in import tariffs of colonies benefit the producers of manufactured articles in the mother country, while preferences in export taxes give advantages to the industries consuming raw materials in the mother country. In either case the basis of these preferences is exploitation. They are a product of the old colonial theory that colonies exist for the benefit of the mother country, or, rather, for the benefit of certain classes in it. The trade of a colony should bear its proportionate expense of the colonial administration in the payment of taxes and, in general, colonial development should follow the lines of the modern conception which regards colonies as trusts to be administered in the interest of civilization.

CHAPTER VII

COLONIAL EXPERIENCES OF THE UNITED STATES

Then felt I like some watcher of the skies
When a new planet swims into his ken;
Or like stout Cortes¹ when with eagle eyes
He star'd at the Pacific—and all his men
Look'd at each other with a wild surmise—
Silent, upon a peak in Darien.

—KEATS

We have our domestic problems incident to the expanding life of a free people, but there is no imperialistic sentiment among us to cast even a shadow across the pathway of our progress. We covet no territory; we seek no conquest; the liberty we cherish for ourselves we desire for others; and we assert no rights for ourselves that we do not accord to others.

—CHARLES E. HUGHES, AT RIO DE JANEIRO, 1922

Criticism of the policy of the "closed door" does not come with good grace from the United States, whose policy in the Philippines may be represented as the least liberal of any nation. The policy of preference and assimilation as pursued by the United States, however, has differed in its motives from that of European powers, and although objectionable, has its extenuation in its historical background. Instead of being a participant in the colonial contest referred to in the earlier chapters, the United States was itself a product of Europe's first period of expansion in the sixteenth and seventeenth centuries, and its part in the scramble for colonies in the nineteenth century was

¹Bad history but good poetry.

purely negative, *i.e.*, in keeping the European powers out of the New World. The acquisition of the Philippines was hardly more than an accident of war.

National Expansion

The present day American attitude toward colonial questions cannot be understood without a review of our territorial acquisitions and the motives influencing our action in each case. Our national development properly falls into two periods. The first stage began with the thirteen original colonies and ended with the Gadsden Purchase (1853), the last addition to the mainland of the United States. Viewing the earlier stage of our expansion as a part of the colonial development of the United States, this country might well be regarded one of the greatest colonial nations.² From the Alleghany and the Blue Ridge mountains the frontier of the nation has been gradually extended to the Pacific, and from the Great Lakes to the Gulf and the Rio Grande. In all these accretions to the national domain—Louisiana, Florida, Oregon, Texas, the Mexican cession including California, and the Gadsden Purchase—there was no intention that they should become colonial possessions in the usual sense of the term. Each acquisition was for the purpose of settlement and eventual statehood. There was to be no difference between the territories and the states of the Union except that the territories were to be placed under such temporary restrictions as should be necessary during the period of early development. The principles for the government of these territories were proclaimed in the Northwest Ordinance of 1787, by which the vast unsettled territory west of the mountains was declared a national domain, a reserve tract out of which, as the population increased, new states should

² Compare our territorial expansion with Russia's.

be created with rights in every way equal to those of the older ones. Even before such states should come into existence, the settlers were to be granted the rights of possession of property, habeas corpus, trial by jury, and other Anglo-Saxon guaranties of liberty.

Settlement of a Continent

At the end of the eighteenth century it was the accepted view that a colony was an area to be exploited for the benefit of the mother country. As colonists of England, the American people had felt the hardships of such a system, and now that they had territory of their own, they decided upon the plan of ultimate equal rights. The Northwest Ordinance is a landmark in the history of government, and its principles have become deeply embedded in American ideals and practice.³

Thus the first period of the nation's development was, strictly speaking, not one of colonial expansion, but of national expansion; that is, the occupation of territory from which might subsequently be created states equally sovereign with the thirteen original states. This period began with the acquisition of the Ohio Valley from Great Britain at a time when she was exhausted by her long struggle with France. This tract was already occupied by settlers and was, moreover, through the campaign of George Rogers Clark, a just spoils of war. Had England insisted on retaining the Ohio Valley, the westward movement of the American people might have been temporarily checked.

The purchase of Louisiana in 1803 was not premeditated. Although the United States needed the mouth of the Mississippi as a free outlet for the trade of the Middle West settlers, the proposal for the sale of this vast tract

³ Compare, however, the Insular Cases, discussed in all modern treatises on American constitutional law.

came not from the United States, but from Talleyrand himself. The American commissioners who signed the terms of the purchase acted without instructions; and President Jefferson, who ratified it, believed that he was committing an unconstitutional act, justified only because it was advantageous to the country. Florida was purchased by the United States from Spain at a time (1819) when the latter was weakened by the revolt of her colonies. The great issues lay in the westward movement with the stake of free or slave territory⁴ played for between the North and the South. In this contest substantial additions to the national domain were made during the next generation. The dispute over the Oregon boundary was settled with Great Britain; slave-holding Texas was admitted to the Union; and a few years later the Mexican territory extending to the Pacific was annexed.

In the half century beginning with the Louisiana Purchase in 1803 and ending with the Gadsden Purchase in 1853, the United States tripled its size, and more than quadrupled its population. Here the movement stopped, and for over a generation the American attitude was one of hostility to further expansion.

Alaska

One case of acquisition of non-contiguous territory in this period is of interest. Only by a liberal definition of the word "colony" is Alaska to fall within the category. At the time of its acquisition the expectation was that Alaska would one day become a part of the mainland through a union of the United States and Canada. Its development has been along the traditional territorial lines and it will eventually be admitted as a state into the Union. Already (August 24, 1912) it has been organized

⁴ Missouri Compromise, in 1820-21.

as a territory with all the qualifications of statehood except population. From the beginning the policy of this country with respect to Alaska has been one of assimilation. In 1868, under "An act to extend the Laws of the United States relating to Customs, Commerce, and Navigation over the Territory ceded to the United States by Russia, to establish a Collection District therein, and for other Purposes," Congress provided: "That the laws of the United States relating to customs, commerce and navigation be, and the same are hereby, extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia . . . so far as the same may be applicable thereto."⁵

The American people in 1867 were in general vigorously opposed to expansion, but they were in favor of buying Alaska. They regarded the purchase as a mark of friendship to Russia and a step in the direction of freeing the American continent from European domination and of preventing Great Britain from acquiring this region. In this attitude may be discerned the influence of that part of the Monroe Doctrine which asserted originally for Russia's special attention "that the American continents . . . are henceforth not to be considered as subjects for future colonization by any European power." No one dreamed of aggressive action. At that time and for a quarter of a century afterwards public opinion was, to use a modern term, anti-imperialistic. So strong was this sentiment that treaties for the purchase of the Danish West Indies and the acquisition of the Dominican Republic failed in the Senate, and a treaty for the annexation of Hawaii in 1893 was withdrawn from consideration by President Cleveland. However, in their opposition to the acquisition of new possessions the American people

⁵ *U. S. Statutes at Large*, vol. 15, sec. 1, p. 240.

were not unmindful of the strategic importance of Hawaii in a scheme of national defense. Long before—in 1842, to be exact—President Tyler had declared in a message to Congress that the United States would oppose the seizure of the islands by any foreign power. Though the people of the United States did not wish at that time to possess Hawaii, they were determined that these islands should not fall into the hands of any other power.

Second Period of Expansion

Alaska belongs to the first period of national expansion. Hawaii is a transitional stage, belonging to the first period in that the background of its acquisition was the desire for adequate coast defenses on the Pacific, and to the second period in that its annexation was precipitated in 1898 by the Spanish American War. By the annexation of Hawaii the American people were confronted with a new colonial problem.

The second stage of expansion may be contrasted with the first in that, unlike the first, (1) the expansion extended overseas and beyond contiguous continental territory, (2) it was in the main passive and unwelcome to the American people, (3) it was considered a necessary evil by the alien people affected, preferable only to the conditions that caused the expansion, (4) it enabled the United States to advance a new principle in international policies, a strong nation establishing the independence of a weak one (Cuba), and (5) it gave impetus to the tendency of the United States to become a world power. This expansion was, in the beginning, repugnant to the American people. The contrast between the two distinct periods is great and Hawaii, as a transitional case, as has been pointed out, can be seen as linking the two, both in time and in characteristics.

American Tradition against the Rule of One People by Another

To understand the declared policy of this country with respect to its possessions, certain factors, inherent in the economic situation and the political history of the nation, must be considered. In the first place, the acquisition of colonies was not, as in the case of most colonial powers, a corollary to the economic and industrial development of the country. When the United States acquired its colonies it had not become industrialized to the point where it was necessary to seek new markets for its surplus of manufactured goods. Its home market was still sufficient to absorb its manufactured products and its raw materials and foodstuffs sold themselves in the international market. There was no compelling urge toward the adoption of a policy of restriction or exclusion. The United States could at that time afford to be generous in its colonial policy.

There were other reasons, however, more generally recognized by the people of the United States and of far more importance from their point of view, why this country should pursue a colonial policy different from that of other colonial powers. Born of a struggle against the arbitrary and oppressive rule of the old, and for the most part abandoned, colonial system, the American people had acquired a tradition against the rule of one people by another. They believed, as they stated in their declaration of independence, "that all men are created equal," and that all governments derive "their just powers from the consent of the governed." Therefore, they hesitated to embark upon a policy of colonial expansion, and when colonies were unexpectedly thrust upon them, their attitude toward dependent peoples was largely determined by their belief in the principle of government "by the consent of the governed." In keeping with this principle, they

adopted a policy of education and training calculated to fit each colony for self-government. With the exception of certain small islands, which are to be held permanently as naval stations, these colonies are to be granted the right of self-government as soon as they become prepared for it. This in substance has constituted the chief feature of the colonial policy of the United States.⁶

American Experiences with Non-Aryan Races within the United States

Experiences with non-Aryan races within the United States have also caused the American people to hesitate and to enter only half-heartedly upon colonial expansion. Contact of alien races with western civilization gives rise to complex problems. It is inconsistent to deny equality to any people under our sovereignty when the very principle upon which our country was founded is equality itself. Unlike the European nations, the United States has had to face this problem in her own home territory, the relation of the white race to the Indian, the Negro, and the Asiatic. The not entirely successful solution of each of these problems has had a restraining influence upon any inclination of the American people toward colonial expansion.

At its very inception the new republic had within its borders a large number of Indians to whom the fundamental principle of the new democracy was wholly inapplicable. What was to be done about it? The Supreme Court settled the question by defining the Indian tribes as "domestic dependent nations."⁷ The Indians were thus not United States citizens, but domestic aliens entitled to their own laws and customs. In conformity with this

⁶ It has been pursued also by Great Britain in the Dominions and in India.

⁷ *Cherokee Nations v. State of Georgia*, 5 Peters 1.

peculiar status, "treaties" were negotiated with the tribes. A democratic organization of the tribe was sought, and by 1886 each tribe managed its own affairs (with the aid of the Federal Government) under a constitution modeled upon that of the United States.

Finally a more effective solution was found. It had its beginning in the Land Severalty Act by Congress in 1887. All the segregated lands and wealth that the United States, as trustee, holds for the Indian tribes, is distributed whenever feasible to the *individual* Indians. Furthermore, the Supreme Court has recognized the right of the "detrribalized" Indian to full citizenship of the United States. Mr. Roosevelt in his first Presidential Message in 1901 sums up what may be roughly taken as the fixed policy of the country:

. . . the time has arrived when we should definitely make up our minds to recognize the Indian as an individual and not as a member of a tribe. The General Allotment Act is a mighty pulverizing engine to break up the tribal mass. It acts directly upon the family and the individual. Under its provisions some 60,000 Indians have already become citizens of the United States. We should now break up the tribal funds, doing for them what allotment does for the tribal lands; that is, they should be divided into individual holdings.

The negro race in the United States offered a problem far more difficult of solution. Attempts to solve it have embittered to the roots the American people and discouraged any ambition to rule over non-Aryan peoples. The old southern view, expressed in the Confederate declaration that "slavery, subordination to the superior race, is his nature and normal condition," was repellant to the conscience of those who believed in the universal application of the democratic theory. The northern view, that the

negro be regarded as a potential fellow-citizen, was not only unacceptable in the South, but wholly incomprehensible to European colonial powers. The reconstruction period brought bitter disillusionment and a realization that the adjustment of the relations of two peoples is a task calling for patience and constructive measures.

Still a third racial problem has been encountered at home. The negroes were helpless, and the American Indians were few, but the first shipload of immigrant Asiatics represented the vanguard of untold millions with a highly developed social system of their own and resentment against any supposed injury to their race. Circumstances of an economic nature, imperative in themselves, cannot be disregarded. The American workman found in the Asiatic a powerful competitor. Because of the unrestricted entry of the Asiatic, the industrial life of the republic was in danger of being revolutionized. Furthermore, natural solidarity of race, together with the American social code, made it impossible for these peoples to be merged into the existing American citizenry. These two factors threatened the virtual extermination of the American working class. The entrance of the Asiatic only increased the hostility of the American toward any proposal involving the rule of one people by another.

Nor have problems of race been limited to continental United States. There appeared in 1900 the necessity of legislating for the peoples in Porto Rico and in the Philippines. The treaty with Spain had not yet been ratified when the American army had on its hands an insurrection in the Philippines that ultimately degenerated into fatiguing and almost endless guerilla warfare. The Americans received their first taste of the experience that the English had undergone in Burmah, and the French in Tongking.

Effect of the Spanish-American War

With the exception of the Virgin Islands,⁸ the increase in the territory of the United States, not already discussed, came by accident, as a result of the Spanish-American War. Although the people of the United States had wished to see Spain driven from Cuba, since they regarded the possession of the island by a foreign power as a menace to their security, they had no desire to acquire it for themselves. At the end of the war with Spain, however, they found Cuba and other territory ceded by Spain unexpectedly in their hands. Almost over night, and without design, they had become a colonial power. There was no plan for dealing with their new possessions and no agreement as to what should be done with them. Despite their tradition against the holding of colonies, they suddenly found themselves in possession of new territory peopled by alien races. There arose at once in this country the cry of "imperialism." So strong was the opposition to the retention of the new possessions that, had it appeared feasible to grant them independence, the United States might have relinquished control over them. But it was certain that if the United States withdrew from its new possessions other powers would seize them. In spite of opposition, therefore, the United States retained control of the former Spanish colonies and set about the task of providing a government for them.

The action of the United States with respect to Cuba discloses most clearly the motives underlying its colonial policy. At the time of the acquisition of Cuba, the United States declared that its motives were unselfish and humanitarian, and that it had no interest except that of the welfare of the Cubans. It proclaimed to the world its inten-

⁸ And the insignificant islands obtained under the Guano Act of 1856.

tion of withdrawing from the island as soon as the people were prepared to govern themselves. This promise has been kept. Although the United States has twice intervened to restore order, it has each time withdrawn when pacification was accomplished. The outcome is that Cuba to-day is prosperous under a republican form of government and her institutions are developing under American tutelage.

As a result of the Platt Amendment adopted by the Congress of the United States on March 2, 1901, the following provision is found in the appendix dated June 12, 1901, to the Cuban constitution:

The Constitutional Convention, acting in conformity with the order of the Military Governor of the Island, of 25 July 1900, by which it was called to assemble, resolves to attach, and does hereby attach to the Constitution of the Republic of Cuba adopted on 21 February ultimo, the following Appendix:

Art. 1. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

Art. 2. That said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government shall be inadequate.

Art. 3. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed

by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

Art. 4. That all Acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

Art. 5. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

Art. 6. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

Art. 7. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States.

Art. 8. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

It would be hypocritical to claim that these provisions and the reciprocity treaty of 1903⁹ do not give the United States a special trusteeship over Cuba. It must be acknowledged that Cuba's sovereignty is limited. American citizens and capital, moreover, have gone into Cuba and economic factors may operate to modify our proclaimed political ideals.

⁹ See p. 131, *supra*.

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Territory of the United States

The area and population of the United States and of its non-contiguous territories are shown by the following table: ¹⁰

Territory	Area		Population	
	<i>Sq. miles</i>	<i>Year</i>		
Continental United States . . .	3,026,789	1920	105,708,771	
Alaska	590,884			
Hawaii	6,449			
Total United States	3,624,122	
Philippines	115,026	1918	10,350,640	
Porto Rico	3,435	1920	1,297,772	
Guam	210	1920	13,275	
American Samoa	77	1920	8,056	
Canal Zone	436	1920	22,858	
Virgin Islands	149	1917	26,051	
Total colonies	119,333	11,718,652	
Grand total	3,743,455	117,427,423	

Note: Owing to their lack of importance, such possessions as Wake, Midway, Howland, Baker and the Guano Islands are not here included.

Our Territories in the Pacific

Long before the American flag waved over the west coast, the ships of the old merchant marine had made it a familiar object on the Pacific Ocean. In time it was raised over more than ships. Zealous naval officers, on a number of occasions, raised it over islands which they christened. In the eighties, about fifty such islands of the Pacific had thus come into the possession of the United

¹⁰ U. S. Tariff Commission: *Colonial Tariff Policies*, p. 573.

States. Congress authorized the President to exercise temporary authority over these islands while American citizens were removing guano. They are commonly known as the Guano Islands. Their present status is indefinite.

Other Pacific Island Possessions

Guam and American Samoa are maintained chiefly as naval bases. The history of the latter is of particular interest. In 1872 an American naval officer entered into an agreement with a local chieftain of Tutuila, one of the Samoan Islands, for the use of Pago Pago as a naval station. In 1878 the cession was confirmed, and the rights of free trade and extraterritorial jurisdiction were established. Between the years 1889 and 1900 the whole Samoan group was jointly administered by the United States, Great Britain, and Germany, but the arrangement proved unsatisfactory. By a Tripartite Treaty of November 14, 1899, and ratified February 13, 1900, the United States permanently acquired Tutuila and several small neighboring islands. In consideration of Germany's withdrawal of her claims to the Tonga Islands, Great Britain withdrew from Samoa and recognized the interests of Germany and the United States. The islands were divided between the two, and provision was made for perpetual commercial equality.¹¹

In the assignment of the German colonies as mandates under the League of Nations, German Samoa was assigned as a Class C mandate to New Zealand. A new general tariff rate of 22½ per cent ad valorem was immediately estab-

¹¹ Arrangement concerning the Samoan Islands, signed at Washington, Dec. 2, 1899:

Art. III. "It is understood and agreed that each of the three signatory Powers shall continue to enjoy, in respect to their commerce and commercial vessels, in all the islands of the Samoan group, privileges and conditions equal to those enjoyed by the sovereign Power in all ports which may be open to the commerce of either of them."

lished (May 1, 1920) with an imperial preferential rate of 15 per cent ad valorem, in violation of the agreement of December 2, 1899.

To-day the commandant of the American naval station in the harbor of Pago Pago is also governor of Tutuila by commission from the President of the United States. He appoints officers and frames laws or ordinances, but does not interfere with native customs (unless they conflict with the laws of the United States) without the consent of the people. American Samoa has a special tariff framed (in 1902) by the governor. The products of American Samoa are admitted into the United States free of duty, but importations into the island from the United States pay the same rates as those from other countries.

The Philippines

Since the accident of war gave the American people possession of the Philippine Archipelago, they have declared it to be their purpose to withdraw American sovereignty and to recognize the independence of the islands as soon as a stable government can be established. A form of government similar to that of Porto Rico has been provided. It consists of a governor-general, who is the chief executive, a legislature consisting of two elective houses, and a judiciary, the supreme court of which is appointed by the President of the United States. The Supreme Court of the United States has the right to review and set aside decisions of the Philippine supreme court in certain classes of cases. Besides the governor-general and the judges of the supreme court a few other officials are appointed by the President, and all laws enacted by the Philippine Legislature must be reported to the Congress of the United States, which reserves the power and authority to annul them. The Philippines are represented in the Congress of the United States by two Resident

Commissioners. The Philippine government frames its own tariffs, but no tariff law becomes effective until it receives the approval of the President of the United States. Otherwise, the trade relations between the Philippines and the United States are controlled exclusively by the Congress of the United States. In tariff matters Congress has enacted legislation providing that no export duties shall be levied or collected on exports from the Philippines. Congress has also provided for free admission of the products of the United States into the Philippines and free admission into the United States of Philippine products not containing foreign materials to the value of more than 20 per cent of their total value.

Our tariff policy toward the Philippines was affected by the treaty of peace signed at Paris December 10, 1898, in which we agreed to grant to Spain equality of treatment in Philippine ports for a term of ten years. In negotiating this treaty the American Commissioners seemed to predict an open-door policy in the Philippines. The Commissioners' first statement was:

And it being the policy of the United States to maintain in the Philippines an open door to the world's commerce, the American Commissioners are prepared to insert in the treaty now in contemplation a stipulation to the effect that for a term of years Spanish ships and merchandise shall be admitted into the ports of the Philippine Islands on the same terms as American ships and merchandise.¹²

The Spanish Commissioners, undertaking to secure a more explicit statement as to the future American policy, inquired:

Is the offer made by the United States to Spain to establish for a certain number of years similar conditions in the ports of

¹² *The Treaty of Paris*, 55th Cong., 3d sess., S. Doc. No. 62, pp. 210, 211 (quoted in report of U. S. Tariff Commission: *Colonial Tariff Policies*, 1918, p. 588.)

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the Archipelago for vessels and merchandise of both Nations, an offer which is preceded by the assertion that the policy of the United States is to maintain an open door to the world's commerce, to be taken in the sense that the vessels and goods of other nations are to enjoy or can enjoy the same privilege which for a certain time is granted those of Spain, while the United States does not change such policy?¹³

The American Commissioners replied:

The declaration that the policy of the United States in the Philippines will be that of an open door to the world's commerce necessarily implies that the offer to place Spanish vessels and merchandise on the same footing as American is not intended to be exclusive. But the offer to give Spain that privilege for a term of years is intended to secure it to her for a certain period by special treaty stipulation, whatever might be at any time the general policy of the United States.¹⁴

An open-door policy was maintained for a time. For three years after the United States took possession of Manila, the old Spanish tariff slightly modified and shorn of the Spanish preferences was applied impartially to the imports of all countries including America. On the other hand, in the ports of the United States, Philippine goods were charged the full rates of the Dingley tariff act.

This policy, however, was not satisfactory to American business men. Trade showed little tendency to follow the flag, and it was soon recognized that our treaty obligations prevented American goods from being given a preferential rate in the Philippines over Spanish goods until after the expiration of the ten-year period.

The American Congress did not appear to feel in any way committed to the policy of the open door. The limitation upon its freedom of action was regarded as the result of a treaty stipulation, rather than as the expression of a general commercial policy.

¹³ *Ibid.*, pp. 216, 217 (*Colonial Tariff Policies, 1918*, p. 589).

¹⁴ *Ibid.*, p. 218 (*Colonial Tariff Policies, 1918*, p. 589).

There was a demand for a revision of the Philippine tariff in order to give a preference to this country in the classification of goods. In 1900 a revision of the Philippine tariff was drawn up by the Philippine Commission and in 1901 submitted to American export interests for criticism and suggestions. These interests supplied the suggested changes in classifications and in methods of assessment to give themselves every advantage possible under a system of uniform rates. With such changes the revision was enacted by the Philippine Commission in 1901, and by the Congress of the United States in 1902.

Included in this act¹⁵ was a provision which later brought incessant charges of exploitation of the Filipinos. Section 2 provided that:

all articles, the growth and product of the Philippine Islands, admitted into the ports of the United States free of duty under the provisions of this Act and coming directly from said Islands to the United States for use and consumption therein, shall be hereafter exempt from any export duties imposed in the Philippine Islands.

Manila hemp was the most important article affected by this provision. The Philippine Government, it was claimed, lost a large revenue through the loss of the export duty,¹⁶ to the sole advantage of American manufacturing interests.

¹⁵ An act to provide revenue for the Philippine Islands, 32 Stat. pt. 1, p. 54.

¹⁶ It was expected that the consequent loss to the Philippine treasury would be more than offset by the provision that all duties collected in the United States on imports from the Philippines be paid into the treasury of the Islands. As a matter of fact, however, according to official figures cited by President Taft, the net loss to the Philippine treasury from 1902 to 1912 amounted to more than \$1,000,000 (*the Export Tax on Manila Hemp*, 62d Cong., 3d sess., H. Doc. No. 1401, pp. 4, 18, and 19). This was due, however, only to the exemption of imports from the Philippines by the act of August 5, 1909.

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The following excerpt from the annual reports of the Philippine Commission is a typical example of the opposition constantly voiced:¹⁷

It is a direct burden upon the people of the Philippine Islands, because it takes from the insular treasury export duties collected from the people and gives them to manufacturers of hemp (manila) products in the United States. These manufacturers were already prosperous before this bounty was given them, and it seems hardly consistent with our expressions of purpose to build up and develop the Philippine Islands when we are thus enriching a few of our own people at their expense.

Finally, the United States tariff act of October 3, 1913 (section IV C) abolished the export taxes of the Philippines, and the Philippine Government Act of 1916 (section 11) provided that no export taxes should be levied in the Philippines.

The revision of the Philippine tariff was favorably reported by the Ways and Means Committee of the House in 1905, in these words:¹⁸

The general purpose of this bill, as of the former act, is to give the United States such benefits as there are arising from the classification of goods. There is no preference in rates given to goods coming from the United States, for the reason that by the terms of the treaty of Paris Spain would have the right to a similar preference on goods imported from Spain to the Philippine Islands until January, 1909.

Typical of our attitude are the words of Representative Webb in defending his narrowly defeated amendment to provide free entry of cotton goods into the Philippines:

¹⁷ *The export tax on manila hemp*, 62d Cong. 3d sess., H. Doc. No. 1401, Annex A, p. 8.

¹⁸ 58th Cong., 3d sess., H. Rept. No. 4600. Quoted in report of U. S. Tariff Commission: *Colonial Tariff Policies*, p. 596.

We control the Philippines. They are our territory. We are now legislating for them. Why not let this great American staple go in there free?"¹⁹

Reliance upon false information in making the classification of cotton goods, however, resulted in the bill being so drafted as to fail of achieving the intended preference. But the error was corrected in a revision of the tariff law the next year. Concerning the effectiveness of the revision, the report of the Philippine Commission for 1907 says:²⁰

The total values of such cottons imported increased \$1,677,750, or from \$6,642,329 for 1906 to \$8,320,079 for the year just ended, or 25 per cent. The increase in the value of cotton goods imported from the United States was even more marked, rising from \$278,796 for 1906 to \$1,056,328 for the year just ended, an actual increase of \$777,532 in value or nearly 400 per cent.²¹ This result is directly traceable to the amendment of the Act of 1905 enacted by Congress on February 26, 1906. This act differentiates narrow cotton fabrics from the so-called double width goods, and thus provides a comparatively low rate of duty upon goods produced in the narrow (American) looms.

There was no opposition in this country to these discriminatory practices, and apparently no consciousness of their unfairness. They were openly advocated by the Republican Party, then in the majority, and were criticised by the Democrats only on the ground that they were not effective.

The ten-year period of equal treatment expiring in 1909 opened the way for tariff acts establishing virtual free trade between the United States and the Philippines. Two bills were passed on the same day—August 5, 1909. The one relating to the Philippine tariff caused little debate in Congress, but was opposed by Mr. Harrison, later gov-

¹⁹ *Cong. Rec.*, Vol. 39, p. 3001.

²⁰ *Report of the Philippine Commission, 1907*, Pt. 3, p. 89.

²¹ The report should have said an increase of nearly 300 per cent.

error of the Islands, on the ground that it permitted the exploitation of the Filipino in the interest of the American manufacturer.²² Whatever may have been the intention at the time of the Treaty of Paris, the open-door policy as to imports into the Philippines was formally abandoned within the same year in which it became legally possible.

The decision of the United States Supreme Court in the Insular Cases late in 1901 made impossible the imposition of tariff duties upon goods entering American ports from the Philippines, except when such duties were specifically provided for by an act of Congress. The issue of the desirability of such duties was thus raised. Some felt that trade from the Islands to the United States should be free as a matter of justice to the Filipinos. It was argued that having taken their Spanish market from them we should give them preferential access to our own. Others advocated preference in order to take the trade of the Philippines from foreigners. But the sugar, rice, and tobacco interests in the United States, fearing competition from the Philippines, insisted that even though a debt might be owed the Filipinos, it should not be paid at the expense of their particular industries. Finally, a compromise was effected (1902) by which Philippine goods, with the exception of certain specific articles, were admitted free to American markets. On the goods excepted, including sugar and tobacco, a reduction of 25 per cent from the Dingley rates was granted. All moneys collected on imports from the Philippines were turned back to the Philippine treasury.

In 1909 free entry was granted to all Philippine products except rice, with the provision that in the case of sugar and tobacco the privilege of free importation should be limited to a specified amount annually. The limitations

²² *Cong. Rec.*, Vol. 44, p. 2003.

were removed in 1913, since when the products of the Philippine Islands not containing more than 20 per cent of foreign material are, when shipped direct, admitted free into the United States. Although exempted from the internal revenue tax of the Philippines, such goods pay the equivalent of the internal revenue tax collected on similar articles in the United States.

In developing their closed-door policy in the Philippines the American people have maintained an attitude both naïve and uncritical. At the same time that they have urged the open door in China, they have enacted discriminatory legislation in the Philippines. Only occasionally has a voice been raised against the inconsistency of such a position. Genuinely liberal forces have at times even sanctioned it on grounds of justice to the Filipinos and fairness to America. Our policy, however, appears less broad when compared with that of the French in Indo-China and the Italian in Eritrea, or when viewed not from the purely nationalistic standpoint but from that of world policy.

There seems to be little doubt of the ability of the Filipinos ultimately to govern themselves; practically the whole administration of the islands, with the exception of the governor-generalship, is now in native hands. If the ability of the Filipinos to govern themselves were the only consideration, their independence would probably be only a matter of time. But there has arisen another consideration, namely, the rampant imperialism of, and the scramble for colonies by, the Great Powers. And it is not certain now that the Filipinos will insist on complete independence in view of the circumstances in which they would be placed. The presence of the United States in the Philippines has, and for many years will continue to have, a stabilizing effect on peace in the Far East. We have definite interests and obligations in the Pacific area. "In

relation to the Pacific Ocean and the Far East," Mr. Hughes has said,²⁸ "we have developed the policies of (1) the Open Door, (2) the maintenance of the integrity of China, (3) coöperation with other Powers in the declaration of common principles, (4) coöperation with other Powers by conference and consultation in the interests of peace, (5) limitation of naval armament, and (6) the limitation of fortifications and naval bases."

These policies are not necessarily inconsistent with Philippine independence, but they suggest that the welfare of the Philippine peoples and the American responsibility for the Archipelago are inseparable from the larger questions of peace and stability in the Pacific.

Our Territories in the Caribbean

The Caribbean is an area in which we have an even more immediate interest than in the Far East. In addition to Cuba, already mentioned, we have Porto Rico, the Canal Zone, and the Virgin Islands and an undefined responsibility in Haiti, the Dominican Republic, and Nicaragua.

The status of Porto Rico can be determined only by inference. In no case is it referred to as a territory. Congress, by an act approved March 2, 1917, gave Porto Rico its present form of government. But in that act Porto Rico was not designated as a territory. According to the enacting clause, "the name Porto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands. . . ." The natives of Porto Rico were made citizens of the United States. The government is the usual territorial form, as developed by the United States, consisting of a governor appointed by the

²⁸ Address at meeting of the American Academy of Political and Social Science, etc., Friday, Nov. 30, 1923, *The Centenary of the Monroe Doctrine*.

President of the United States, a judiciary, the supreme court of which is appointed by the President, and a legislature composed of two elective houses. Porto Rico is represented in the United States by a Resident Commissioner. The United States has established a district court of its own in Porto Rico and reserves to itself the right to legislate on certain subjects, including tariffs. In tariff matters Porto Rico bears about the same relation to the United States as do Alaska and Hawaii.²⁴ Free trade with Porto Rico was strongly opposed in this country by the beet sugar and other protected interests, and until March 1, 1902, products of Porto Rico were dutiable at a special rate, amounting to 15 per cent of the Dingley rates. Section 2 of "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes" (approved April 12, 1900, and incorporated in the act approved March 2, 1917) provides:

That . . . the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries. . . .

Section 3 of the act further provides:

. . . and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico.

The political future of the island may take one of three forms: It may retain its present status; it may be

²⁴ As in the case of Alaska and Hawaii, Porto Rico is a customs district of the United States but, unlike Alaska and Hawaii, Porto Rico retains customs revenues collected at its ports and the United States refunds to Porto Rico the internal revenue taxes collected on its products coming into the United States.

admitted as a State into the Union, or it may be organized as a territory (which would be taken as an indication of ultimate statehood). Porto Rico's problems, however, are economic, rather than political. A tremendous increase in population since 1900,²⁵ together with a decrease in the number of small farms and lack of extensive manufacturing development, have led to periodic unemployment and consequent poverty and have created problems far overshadowing any political issues.

In 1904, we acquired "use, occupation, and control" of the Panama Canal Zone. At the time we had no desire to obtain a colony, but the land was inhabited and by acquiring authority over it we acquired a colony also. The administration of the Canal Zone represents a different policy from that followed by the United States in dealing with its other colonies. In establishing a government for the zone, Congress made no provision whatsoever either for self-government or self-determination on the part of the inhabitants. Its administration was placed under the absolute control of a governor responsible only to the President of the United States. One writer has aptly called the Canal Zone a "Crown Colony." The cities of Panama and Colon are not included in the Canal Zone grant, but remain under the control of Panama, except that the United States prescribes sanitary regulations and reserves the right to maintain order if, in the judgment of the United States, Panama is unable to do so. In these cities the United States maintains customs collectors, who assist officials of the Republic of Panama to collect duties on imports destined for other portions of Panama. All

²⁵ There are now 378 persons to the square mile in Porto Rico, an increase of 100 persons per square mile since the beginning of American rule. In the United Kingdom, there are 373 per square mile; Italy, 318; Germany, 310; Switzerland, 234; Japan, 203; France, 189; China, 122; Santo Domingo, 40; United States, 37.

importations into the Canal Zone by the United States for its own use are duty-free, but importations from the Canal Zone into the United States pay the regular tariff rates.²⁶ An attempt was made by the United States to apply the tariff act of August 5, 1909, to imports into the Canal Zone from foreign countries, but the Attorney General of the United States rendered an opinion to the effect that the Canal Zone was not a possession of the United States within the meaning of the act.²⁷

The Virgin Islands, obtained from Denmark by treaty August 4, 1916, were acquired principally for strategic reasons. They are ideally located for a supply station for ships plying between New York and South America. Moreover, the island of St. Thomas has one of the finest natural harbors in the world, and it was to have this harbor for the use of its navy that the United States obtained possession of the islands. Their commercial value and the desire to prevent their acquisition by other foreign powers also actuated their purchase. For all these reasons taken together they seemed so desirable that no great opposition was encountered when the United States agreed to pay Denmark's price of \$25,000,000. It has been calculated that they cost the United States \$295 an acre, as compared with 2 cents an acre for Alaska, 27 cents an acre for the Philippines, and \$35.83 an acre for the Canal Zone.

The government of the islands is under the control of the Navy Department, with a naval officer acting as governor. By an act to provide a temporary form of government (approved March 3, 1917), Congress provided that the present laws and institutions of the islands shall be

²⁶ For customs regulations see the *Treaty with Panama*, in U. S. Stat., Vol. 33, p. 843.

²⁷ 27 Op. Atty. Gen. 594 (1909).

continued in so far as is possible. The treaty states that "the civil rights and the political status of the islands shall be determined by Congress." But to date Congress has not defined their status and meanwhile the Islanders are virtually "stateless persons." The United States Department of State declares that they are "inhabitants of the Virgin Islands, entitled to the protection of the United States." But they are in the anomalous position of being unable to vote because they are not citizens, and of being unable to become citizens because they are not aliens.

The trade between the islands and the United States is provided for in sections three and four of the act, which follow:

Section III: That on and after the passage of this Act there shall be levied, collected, and paid upon all articles coming into the United States or its possessions, from the West Indian Islands ceded to the United States by Denmark, the rates of duty and internal-revenue taxes which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product, of, or manufactured in such islands from materials the growth or product of such islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from such islands shall hereafter be admitted free of duty.

Section IV: That until Congress shall otherwise provide all laws now imposing taxes in the said West Indian Islands, including the customs laws and regulations, shall, in so far as compatible with the changed sovereignty and not otherwise herein provided, continue in force and effect, except that articles the growth, product, or manufacture of the United States shall be admitted there free of duty: *Provided*, That upon exportation of sugar to any foreign country, or the shipment thereof to the United States or any of its possessions, there shall be levied, collected, and paid thereon an export duty of \$8 per ton of two thousand pounds

irrespective of polariscope test, in lieu of any export tax now required by law. *U. S. Statutes at Large*, Vol. 39, p. 1133.

The Virgin Islands are the only possessions of the United States in which there are export duties. These duties, imposed on sugar, cotton, sirup, rum, and cottonseed in St. Croix, and on sugar, rum and molasses in St. John and St. Thomas, are levied alike on exports to the United States and to foreign countries.

American Interest in the Caribbean

No consideration of our colonial policy would be complete that fails to consider our Caribbean interests other than our interests in Cuba, Porto Rico, the Canal Zone, and the Virgin Islands. The Monroe Doctrine is not a policy of aggression. It does not even imply that we seek control over Caribbean states, but unfortunate financial ventures and unstable politics in certain of these states have forced us to establish temporary protectorates over them.²⁸

The original purpose of the Monroe Doctrine may be restated. It opposed the extension of the European political system to this hemisphere and the colonization of the American continents by European states. It was strictly a policy of self-defense. As the years passed the policy was misused and misinterpreted. It still is essentially a simple policy of self-defense. Four corollaries may be deduced:

1. Opposition of the United States to the transfer of American territory from one European state to another. This originated with Clay's declaration to France in 1825 that we could not consent to the occupation of Cuba and Porto Rico "by any other European power than Spain under any contingency whatever." There has been but one

²⁸ See page 368, *et seq.*, *infra*.

violation of this principle—the sale of St. Barthelémy by Sweden to France in 1877.

2. Opposition of the United States to the transfer of American territory by an American state to a European power. This originated with Polk's refusal, in 1848, to countenance the voluntary transfer of Yucatan to a European nation.

3. Establishment of the principle that the United States shall assist in adjusting claims against an American state. This originated with President Roosevelt in 1905, on the occasion of his action in the crisis in the Dominican Republic and may be considered the basis of the present American policy in the Caribbean and in Central America. Since 1905 the United States extended its control to the Dominican Republic, Haiti,²⁹ and Nicaragua, and negotiated, but without success,³⁰ for the control of Honduras. Though not nominally, the United States has in fact established temporary protectorates over these three countries. The various parts of the world are economically so interdependent that no one section can be permitted continually to imperil the interests and welfare of the others. The world demands some measure of political, industrial, and sanitary stability, and if a people, with whom chronic disorder and chaos have become the rule, cannot achieve their own salvation, then the task must be undertaken by another. This task in the bankrupt countries of Tropical America, whether under an outgrowth of the Monroe Doctrine or otherwise, must be assumed by the United States. Their proximity to us and our resources make this country the logical power to assume the responsibility.

At the same time it must be remembered that the small Latin countries have neighbors who may look with fear upon our growing influence, and it behooves us to be scrupu-

²⁹ S. Doc. No. 794, 67th Cong., 2d sess. (1922).

³⁰ The treaty was rejected by the United States Senate.

lous in our conduct that the purity of our motives may not be questioned.⁸¹

4. Opposition of the United States to military or naval bases of Asiatic powers in this hemisphere. This was established by the Lodge resolution of 1912, at the time when Japan was thought to be seeking a naval base at Magdalena Bay.

The most substantial contribution of recent date toward an adjustment of the growing confusion over the Monroe Doctrine is the address of Secretary of State Hughes before the American Academy of Political and Social Science at Philadelphia on November 30, 1923. After speaking of the original Doctrine he said:

But fully recognizing the value of the Doctrine, it still remains true that it simply states a principle of opposition to action by non-American Powers. It aims to leave the American continents free from the described interposition, but it does not attempt to define in other respects our policies within this hemisphere. Our affirmative policies relating to our own conduct in relation to other American States, and not merely our policy with respect to the conduct of non-American Powers, should be clearly envisaged. Those affirmative policies, while distinct from the mere principle of exclusion set forth in the Monroe Doctrine, are not inconsistent with that Doctrine but rather constitute its fitting complement.

First. We recognize the equality of the American Republics, their equal rights under the law of nations. . . . When we recognized these Republics as members of the family of nations we recognized their rights and obligations as repeatedly defined by our statesmen and jurists and by our highest court. We have not sought by opposing the intervention of non-American powers to establish a protectorate or overlordship of our own with re-

⁸¹ It is not hypocritical for an American writer to say that the American attitude toward dependent peoples has differed from that of other powers. It may be said cynically that we can afford to be generous. Our policy has many helpful precedents in British policy. The Anglo-Saxon belief in self-government works through both governments.

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spect to these Republics. Such a pretension not only is not found in the Monroe Doctrine but would be in opposition to our fundamental affirmative policy.

Second. It follows that it is a part of our policy to respect the territorial integrity of the Latin American Republics. We have no policy of aggression; we do not support aggression by others; we are opposed to aggression by any one of the Latin American Republics upon any other.

. . .

Third. States have duties as well as rights. Every State on being received into the family of nations accepts the obligations which are the essential conditions of international intercourse. Among these obligations is the duty of each State to respect the rights of citizens of other States which have been acquired within its jurisdiction in accordance with its laws. A confiscatory policy strikes not only at the interests of particular individuals but at the foundations of international intercourse, for it is only on the basis of the security of property validly possessed under the laws existing at the time of its acquisition that the conduct of activities in helpful coöperation are possible. Each State may have its code of laws in accordance with its conception of domestic policy, but rights acquired under its laws by citizens of another State it is under an international obligation appropriately to recognize. It is the policy of the United States to support these fundamental principles.

Fourth. It is the policy of this Government to make available its friendly assistance to promote stability in those of our sister Republics which are especially afflicted with disturbed conditions involving their own peace and that of their neighbors. It is the desire of the United States to render this assistance by methods that are welcomed and which are consistent with the general policies above stated.

. . .

In promoting stability we do not threaten independence but seek to conserve it. We are not aiming at control but endeavoring to establish self-control. We are not seeking to add to our territory or to impose our rule upon other peoples.

Fifth. The United States aims to facilitate the peaceful settlement of difficulties between the Governments in this hemisphere.

. . .

Sixth. In seeking to promote peace, as well as to aid in the reduction of unproductive expenditures, this Government has sought to encourage the making of agreements for the limitation of armament. . . .

Seventh. The policies which have been described are not to secure peace as an end in itself, but to make available the opportunities of peace; that is, to open the way to a mutually helpful coöperation. This is the object of the Pan-American conferences. . . .

Eighth. It should also be observed that in our commercial relations the United States is seeking unconditional most-favored-nation treatment in customs matters.

. . .

Ninth. We have certain special policies of the highest importance to the United States.

We have established a waterway between the Atlantic and Pacific Oceans—the Panama Canal. Apart from obvious commercial considerations, the adequate protection of this canal—its complete immunity from any adverse control—is essential to our peace and security. We intend in all circumstances to safeguard the Panama Canal. We could not afford to take any different position with respect to any other waterway that may be built between the Atlantic and the Pacific Oceans. Disturbances in the Caribbean region are therefore of special interest to us not for the purpose of seeking control over others but of being assured that our own safety is free from menace.

A substantial contribution toward mutual coöperation and good will between the Central American republics and the United States is expressed in the success of the Convention of Central American Republics in Washington during the winter of 1922-23. Among the encouraging provisions of the resulting treaty are those for the establish-

ment of an International Central American tribunal, the limitation of armaments, and the non-recognition by the Central American Republics of any other government which may come into power through a *coup d'état* or a revolution against a recognized government so long as the freely elected representatives of the people have not constitutionally reorganized the country. This was a considerable achievement toward mutual understanding in future dealings between the United States and the Central American Republics.

CHAPTER VIII

THE OPEN DOOR

The principles of American foreign policy are simple and readily stated. We do not covet any territory anywhere on God's broad earth. We are not seeking a sphere of special economic influence and endeavoring to control others for our aggrandizement. We are not seeking special privileges anywhere at the expense of others. We wish to protect the just and equal rights of Americans everywhere in the world. We wish to maintain equality of commercial opportunity; as we call it, the open door.

—CHARLES E. HUGHES, 1922

The Principle of Equality of Treatment

That colonies not only present problems touching the administration and development of native peoples but that they stimulate economic rivalry among the colonizing powers has been pointed out in preceding chapters. During the later years of the nineteenth century, when the principal European nations were engaged in a mad scramble for colonies, the United States, busily occupied with internal development, held aloof. Later, however, as a result of the Spanish-American War, this country found itself in the colonial field and a recognized world power. Although American commercial policy in the Philippines has been inconsistent with the asserted policy of equal treatment, our influence has been exerted in the larger issues of world politics on the side of commercial equality and liberality.

Acceptance by the United States of the principle of

equality of treatment should mean, it has been pointed out,¹ that we treat all countries on the same terms, and in turn, require equality of treatment from every other country, *i.e.*, that, while neither asking nor granting special favors, we exercise our powers and, if necessary, impose penalties, not for the purpose of securing discriminations in our favor, but to prevent discriminations to our disadvantage.

When applied to colonial possessions and to countries such as China and Persia, this principle of equality of treatment is known as the policy of the "open door." The term "open door" does not imply the absence of commercial restrictions and regulations; it means simply that import and export duties, port dues, or other charges shall apply equally and without discrimination to all countries alike, including the country in political control.

Not only does practical application of the principle of the "open door" contribute to coöperation and understanding among rival commercial nations, but adherence to the principle is a necessary corollary to the modern conception of colonial responsibility. In contrast with the old conception that colonies exist to be exploited for the benefit of the mother country stands the conception that the economically less advanced areas of the earth are trusts of the more advanced states, and this only until such time as they may be able to govern themselves. Colonizing nations and colonial peoples will jointly profit in the long run by the fullest application of the principle of equal commercial opportunity.

The Congress of Berlin, in 1878, recognized the revival of interest in colonies then manifesting itself in Europe. From that date the political center of gravity shifted from

¹ U. S. Tariff Commission: *Reciprocity and Commercial Treaties*, 1918, p. 10.

Europe to Africa, Asia, and the Pacific Islands.² With all the principal powers of the world seeking opportunities to trade in these areas, conflict was inevitable, and many problems growing out of that condition finally found their solution in the adoption, by the nations concerned, of the policy of the open door. Economic coöperation was substituted for monopoly, and the agreed concession of territory to any one power for administration was effected with the understanding that the controlling power should exert its influence only within certain specified limits not prejudicial to the commercial interests and opportunities of other nationals.

The Open Door as a Matter of Policy: The Netherlands

Great Britain, the Netherlands, and Germany (until she lost her overseas possessions) maintain in general, as a matter of sound policy, the open door in their colonies. They recognize that their national interests are too great to be confined to their own possessions and that commercial equality is not only sound internationally but in line with those interests. Their success in trade and finance depends on the good will of the rest of the world.

The present commercial policy of the Netherlands is evidence of a radical departure from the former Dutch policy of extreme exclusion. Early in the colonial period, the Netherlands entered the contest for the trade of both the western and the eastern world. Thus, in 1619, the Dutch East Indies Company, under a charter from the Netherlands States-General, had established its capital at Batavia, on the Island of Java, and ruled as a sovereign in the Dutch East Indies until the islands were taken over by the Netherlands Government in 1798. The Dutch policy in accord with the spirit of the times had been one of

² Viallate, Achille, *Economic Imperialism and International Relations During the Last Fifty Years*, New York, 1923.

exclusion and exploitation and had maintained during the whole period of control a practically unimpaired monopoly. A slightly liberalizing influence came when the British seized the Dutch possessions in the East during the Napoleonic period. In 1815, however, the Congress of Vienna restored these colonies to their former owners and the régime of exclusion was reëstablished.

Throughout the early period, colonial activities meant to the Netherlands not so much the transfer of colonists from the mother country to the colonies as trade activities based on the exploitation of colonial resources in the interests of Dutch shipping. As Holland is not primarily a manufacturing nation, she has never regarded her colonies as markets for her goods or as sources of raw materials for her home industries. Instead, she has shaped her colonial policy for revenue and for the development and maintenance of her shipping and her entrepôt trade.

From the standpoint of colonial population the Netherlands to-day rank third among colonial powers. The Dutch East Indies are among the best and most profitable of colonial possessions. By far the most important of these on the basis of present development, are Java and Madura, with a combined population of over 36,000,000. The other islands, the most important of which are Sumatra, Celebes and Borneo, although larger in area, have much smaller populations and are comparatively undeveloped economically.

In the early centuries the chief product of the Netherlands' East India trade consisted of spices. Later, tea, coffee, and sugar were produced on a commercial scale and in recent years tobacco, copra, and rubber have entered into trade. Rice is raised in considerable quantities, but primarily for home consumption, and the exports are small. About 90 per cent of the world's production of

cinchona bark, the raw material for quinine, is obtained from Java.

The Dutch have emphasized greatly the development of agriculture in their East Indian possessions, particularly in Java. For many years the "culture" system yielded the mother country a substantial and regular revenue. Under this system, old rents and labor taxes were commuted and natives were required to plant one-fifth of the village lands in sugar cane, or in other crops suitable for export, and to devote one day's labor in seven to the cultivation of the crop. One-third of the sugar crop was taken over by the Government at a nominal cost and the remainder sold to a Dutch trading company. While these government cultures have been praised as beneficial to the natives, impartial critics have pronounced them "a cruel and unjust exploitation of the natives," and they have now practically been abandoned.

Prior to 1874 the Dutch East Indies had preferential tariffs in favor of Dutch goods and Dutch shipping,³ and for a long period export taxes were of importance. More recently, however, great changes have taken place in Dutch colonial policy. The adoption of the open-door principle in import tariffs was the first recognition of the fact that if these profitable islands were to be retained they must be permitted to develop. At the present time the Netherlands impose few import rates higher than 12 per cent and import duties apply equally to the trade of all nations. Export taxes have also been modified as the Government has succeeded in persuading the local chieftains to yield their rights of levying internal taxes between the different native states.

But while these restrictions were being abolished, others were being set up to the detriment of foreign trade and the investment of foreign capital. Among these discrimi-

³ Some preferences lingered until 1886.

nations were land regulations and customs provisions now in process of removal with the result that in recent years foreign capital, particularly American, has moved freely into the islands for the development of such interests as large rubber plantations on the Island of Sumatra.

In abandoning the closed-door policy the Dutch devised some other means of encouraging their shipping, among them being the establishment of free ports and the granting of subventions to their ships. They have endeavored in this way to maintain their shipping prestige and to retain for Rotterdam and Amsterdam the entrepôt trade so long held. The policy of the open door has not been without its advantages. The Dutch foresee that their interests lie in the development of the islands, and that they will derive their profits, not from a monopolized area, but from a share in the trade of the world. "The results of the open-door policy," Mr. J. T. Cremer, Minister of the Netherlands in Washington said in 1918,⁴ "are very satisfactory. Far from having stunted home enterprise the foreign competition has emulated and strengthened it, and our products compete with those of other nations, not only on the colonial but also on the world's markets. Although Holland hardly produces any charcoal and produces no ores of any kind, although it is therefore severely handicapped as an industrial country, still its industries have greatly developed in the last half-century. Its shipping enterprise is known all over the world; in the transit through the Suez Canal it took the third place before the war."

Open-Door Policy of Great Britain

When the tremendous revival of interest in colonies came in the seventies and eighties of the nineteenth cen-

⁴ *Proceedings of the American Economic Association*, meeting at Richmond, Va., December, 1918, p. 342.

tury, Great Britain was already in a strategic position and was able, from beginnings already made, to expand her empire rapidly, particularly in the hinterland of many of her coast settlements.

In addition to the United Kingdom and the self-governing Dominions, already considered, the British Empire to-day consists of the Crown Colonies⁵ and India; and some would include also the mandated territories held under the provisions of the Treaty of Versailles. Except in India there is practically no manufacturing in the Crown Colonies. They are important because they are valuable (1) as trans-shipment points, or (2) as sources of raw materials, or (3) as markets for the manufactured goods of the mother country.

In the first place, Great Britain controls a number of important points on the great routes of trade, including the Straits Settlements, Hongkong, Aden, Gibraltar, Zeyla (Somaliland) and Wei-hai-wei (territory leased from China). These colonies are free ports and are of primary importance in the trans-shipment trade, often having no other claim to commercial importance.

In the second place the colonies which serve mainly as sources of raw materials may for convenience be considered according to their geographical location. In Asia, the Malay States are important sources of rubber and tin. British North Borneo is also a world source of rubber, gutta percha, and other raw materials. Ceylon, one of the most productive areas of the East, has a large trade with the Empire. It exports quantities of cacao, tea, cinnamon, copra, and plumbago, and imports cotton manufactures, rice, coal, and sugar. The Bahrein Islands, off the coast of Arabia, are the seat of important pearl fisheries.

A second group of colonies, composed of the South Sea

⁵ See table on p. 209.

Islands, produces copra, pearls, tropical fruits, coffee, and rubber. These islands are practically undeveloped and are commercially unimportant except as sources of raw materials.

A third group is made up of the colonies on the east of Africa and includes the Anglo-Egyptian Sudan, Kenya and Uganda, Zanzibar, and Nyasaland.⁶ In these colonies tariff rates and commercial regulations are to a large extent determined by treaty. While they are to a large extent undeveloped, they are primarily agricultural, but produce important minerals, Kenya being a source of mica and carbonate of soda. The mandated territory of Tanganyika is associated with this group and its tariff is uniform with that of Kenya and Uganda.

A fourth group consists of the four colonies, Gambia, Sierra Leone, Gold Coast, and Nigeria, on the west coast of Africa (British West Africa). Tin and manganese are important products, and some coal is mined. The Gold Coast is the world's greatest producer of cocoa. The open door is guaranteed in the colonies in the Gulf of Guinea for thirty years from the date of the Anglo-French treaty of 1899.

A fifth group of colonies consists of the Caribbean possessions and the Falkland Islands. The latter are the seat of important whale fisheries. The British West Indies, because of geographic proximity, have closer trade relations with the United States and Canada than with the British Isles. Preferences exist in favor of Canada, the British Isles, and other portions of the Empire.

In a sixth group are included Malta, Cyprus, and Mauritius. Malta, in the Mediterranean just south of Italy, is one of the world's great ports of call and a base for the supply and refitting of British naval ships in the Medi-

⁶ Egypt is now classed as independent.

terreanean. Cyprus, in the eastern part of the Mediterranean, is primarily an agricultural state, importing manufactured articles and exporting fruits and other sub-tropical agricultural products. Mauritius, off the coast of Madagascar, is also primarily an agricultural colony, exporting sugar and importing machinery and cotton goods. Except for small exports to France and Madagascar, its trade is confined to the Empire.

As pointed out in a former chapter, the old colonial policy was based on the closed door. When Great Britain abandoned protective tariffs (1842-1860) she also abandoned preferences and bounties on trade with the colonies. For practically sixty years before 1919, when a limited policy of preference was adopted in London, the British Government had maintained freedom of trade without preferential tariffs in those Crown colonies whose tariff policies were determined in London. In those colonies determining their own tariff policy, preferences had also been discouraged, and the few preferences adopted could not be said to reflect the policy of the home government. On the whole, it may be affirmed that the policy of the Empire was that of the open door and that it was largely due to the liberality of the British in this respect that other nations acquiesced in the rapid extension of British colonial possessions. Great Britain has not only maintained this policy in domestic relations but she has exerted her influence to extend the principle through the negotiation of treaties. She has been a party to most of the open-door treaties and has even been a moving factor in bringing them about.

India: The Open Door from Necessity

India is unquestionably the greatest dependency in the world. Although it contains many important native states, exercising considerable independence, the British have

been able, by the terms of treaties with the native rulers and by the influence of the official British "Residents" at their courts, to make the Indian Empire a unit for trade purposes. Industry is still largely in the handicraft stage and India is essentially an exporter of raw materials; but modern methods of manufacture are being rapidly adopted, particularly in the jute and cotton industries. Since 1858, when the British Government took over the control of the country from the East India Company, India has become a great free-trade area. The interest of British manufacturers in this market has been the prime influence behind the free-trade movement.

In 1919 India adopted a preferential export tax on hides and skins, and certain interests made an unsuccessful effort to establish preferences in her import schedule. In 1903 a government report upon the establishment of preference to British goods in India had opposed such preferences on the grounds that they would cause difficulties in Indian finance, that they would be of no considerable advantage either to India or to Great Britain, and that they would involve the danger of retaliation by other countries. In 1920 an investigating committee submitted its report without making any positive recommendations, but expressed the opinion that in view of the demand for Indian raw materials, there was no danger of retaliation by foreign countries. "There is every reason to suppose,"¹ the committee stated, "that the conclusion of peace initiates a period of keen competition for the world's raw materials. . . . If this view is correct, and our export trade is not likely to be seriously prejudiced, the danger of disturbing our favorable balance of trade and the risk to the stability of our currency policy . . . need not give cause for serious anxiety. In this statement it is assumed that any

¹ U. S. Tariff Commission: *Colonial Tariff Policies, 1922*, p. 348.

preference to be given in India to Empire products shall in general be to a moderate extent. The view has not infrequently been expressed that one of the reasons why the world-wide extension of our Empire has hitherto received the acquiescence and even the good will of the majority of foreign nations has been our adoption and maintenance of a policy of free trade. If the preference accorded were excessive, this good will would disappear, while, on the other hand, a moderate degree of preference to Empire products should not be regarded by foreign nations as more than a matter of domestic concern." The committee concluded that, "though India may have little to gain from a scheme of imperial preference, she is not likely to lose more than she gains" and "that a favorable rate of duty would be of no small advantage to the United Kingdom, in so far as the Indian import trade is concerned . . ." Regarding the possibility of retaliation by the United States, the Commission expressed the opinion that, in view of the importance of Indian raw materials to American industries, it was "extremely improbable that the United States would introduce a tariff specially directed against Indian exports, and it seems probable that they could not do us much harm if they did."⁸

National opinion in India, however, decided against preference. Even the preferential feature of the export tax on hides and skins was abandoned in 1923.

Open Door through Treaty Stipulations: Central Africa

While in the colonial possessions of Great Britain and of the Netherlands the open-door policy has been adopted more or less without suggestion from the outside, in numerous other areas of the world it has been accepted as

⁸ *Ibid.*, p. 349.

a compromise between conflicting interests. Nations, no one of which could assert political control over areas in dispute, have entered into multi-lateral treaties or arrangements for the establishment of equal economic opportunity for all. This was done 1884-5 at Berlin for Central Africa; in 1906 at Algeciras for Morocco; and in 1898 by the Hay notes and again in 1922 at Washington for China.

Before Livingstone discovered and Stanley explored the Congo, Africa was looked upon as "the dark continent." It lay for years at the door of Europe undeveloped. The commerce of Europe swept around it to Asia, and only at a few points along its coast were trading posts established. In the extreme north and the far south there were some colonial activities, but the vast continent, with its varied peoples and inexhaustible resources, remained for centuries untouched. When Stanley emerged from the Congo in 1877, he entered a world on the eve of a period of great colonial activity. His accounts of Central Africa appealed to the imagination of Europe and led to immediate plans for opening up Africa. One of the first leaders in this movement was King Leopold of Belgium. In 1878 he organized a committee which soon afterwards became the "International Association of the Congo." This association, while purporting to be an international organization, tended to become a Belgian enterprise or, rather, an enterprise of the Belgian king himself. In 1879, Stanley, as an agent of the Association, went back to the Congo and, by entering into treaties with the native chiefs, began to lay the foundations of a Central African state. The United States was among the first powers to recognize the international association as a state.

Other powers, fearing to lose opportunities for commercial development, began to take steps to protect their interests. The Portuguese renewed earlier negotiations

and the Anglo-Portuguese Convention of 1884 recognized both banks of the Congo as Portuguese territory. This agreement roused opposition which blocked its ratification and was the direct cause of the calling of the famous Berlin Conference of 1884-5. This Conference, initiated by Bismarck, discussed freedom of commerce in the basin and mouth of the Congo, the application to the Congo and the Niger of the principle of free navigation, and the formalities to be observed in order that new occupations on the coast of Africa might be considered effective.

The General Act of the Conference of Berlin⁹ granted, to use modern terminology, a mandate to the Congo Association over a vast territory in the Congo basin and laid down the principles under which the territory was to be administered. In general, it provided for the open door to the commerce of all nations in the Congo. The trade of all nations was to enjoy complete freedom¹⁰ in all regions forming the basin of the Congo and its outlets in a maritime zone extending along the Atlantic Ocean, and in a specified zone stretching eastward from the Congo basin. Differential dues of all kinds were prohibited and no charges were to be made which were not based on a fair compensation for expenditures made in the interests of trade. Monopolies and favors in matters of trade were prohibited. In short, nations were to be treated on a footing of perfect equality in the Congo.

At the Brussels Anti-Slavery Conference, held in 1890, a declaration was made permitting the imposition of import duties not to exceed 10 per cent ad valorem in the

⁹ This conference was followed by a treaty between the Congo State and the United States, dated January 24, 1891.

¹⁰ Export duties, however, were not restricted in amount, and in 1890 a modification was made allowing a general import rate as high as 10 per cent, with higher rates on alcohol and alcoholic beverages. In 1910 higher rates were also allowed on arms and ammunition.

Congo, but again provision was made against differential features.

The General Act of the Conference of Berlin of 1884-5 remains in effect. A revision of this Convention, signed at St. Germain-en-Laye, September 10, 1919, by representatives of the United States, the British Empire, France, Belgium, Italy, Japan, and Portugal, has not been ratified by all the signatories. This revision continues the provision for the open door but does not require its extension to non-members of the League of Nations. Furthermore, it abolishes the limitation upon the maximum rate of duty.

The Algeiras Conference

The Algeiras Conference of 1906 was also the result of conflicting claims in Africa. The North African colonies, with their long and close association with Europe, differ greatly from the tropical regions in dispute at the Berlin Conference. The trouble arose over the conflicting interests in Morocco, of four countries—France, Spain, Great Britain, and Germany. Morocco, governed by a weak monarch, more or less entirely independent of Turkish suzerainty, had for some time maintained commercial relations of a sort with Europe. With the revival of interest in colonies towards the end of the nineteenth century, relations with this country of sparse population and great natural resources began to assume greater importance. Unrest within the country made business difficult, and disputes between the government and foreign traders were constant.

Trouble was first precipitated in a curious manner. The difficulties engendered in 1898 between the English and the French by the Fashoda incident in Egypt finally led to the famous Anglo-French conventions of April 8, 1904. France accepted the British occupation of Egypt, and Great Britain agreed to further French interests in

Morocco. Reservations were made, however, which guaranteed that there should be no differential treatment, for the French and the British respectively, in import duties or railroad rates in either area. At the same time a secret declaration was signed which provided for mutual aid should either signatory be opposed by other powers in the establishment of the claims recognized by the first agreement. Spain was satisfied by the recognition of her interests in the so-called "Spanish Zone." German claims, however, were not provided for. The German Emperor appeared at Tangier, Morocco, on March 31, 1905, and said:¹¹

It is to the Sultan in his position as an independent sovereign that I am paying my visit to-day. I hope that under the sovereignty of the Sultan a free Morocco will remain, open to the peaceful rivalry of all nations, without monopoly or annexation, on the basis of absolute equality. The object of my visit to Tangier is to make it known that I am determined to do all in my power to safeguard efficaciously the interests of Germany in Morocco, for I look upon the Sultan as an absolutely independent sovereign. (Staatsarchiv, Vol. 73, p. 117.)

This was a challenge to the disposition made of Morocco by France and Great Britain, and the international situation was strategically in favor of Germany. Through the efforts of President Roosevelt the nations concerned in the controversy agreed to assemble at Algeiras for conference. The Act of Algeiras of 1906 modified and extended the Madrid Convention of 1880. It consists of an introduction and seven chapters. The introduction states the purpose of the convention in the following terms:

"Inspired by the interest attaching itself to the reign of order, peace, and prosperity in Morocco, and recognizing that the

¹¹ Anderson, Frank M., and Hershey, Amos S.: *Handbook for the Diplomatic History of Europe, Asia, and Africa, 1870-1914*, Washington, Government Printing Office, 1918, p. 332.

attainment thereof can only be effected by means of the introduction of reforms based upon the triple principle of the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality, have resolved, upon the invitation of His Shereefian Majesty, to call together a conference at Algeiras for the purpose of arriving at an understanding upon the said reforms, as well as examining the means for obtaining the resources necessary for their application. . . ."¹²

The next event in Moroccan affairs seemed equally pregnant with possibilities of conflict. The Agadir incident of 1909 again brought the relations of France and Germany very near to the breaking point. The dispute, however, was finally settled when France transferred to Germany certain strips of territory in equatorial Africa, in exchange for which Germany consented to the establishment of a French protectorate over Morocco. The provisions for equality of treatment were, nevertheless, to remain in effect and the provisions of the Algeiras Convention were not changed.

The protectorate was established in 1912 and the consent of all the signatories to the Convention was obtained. The United States, as well as other nations, has refused to admit of any derogation from the principles laid down by the Algeiras Act. The agreement between France and Germany (1911) which led to the establishment of a protectorate in 1912, contains the following:¹³

The Imperial German Government, seeking only economic interests in Morocco, declares that it will not hinder France in its purpose to support the Moroccan Government in the introduction of all administrative, judicial, economic, financial, and military reforms which are necessary for the good government of the

¹² Malloy: *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other States*, Vol. II, p. 2159.

¹³ Peloncle: *Statut international du Maroc*, p. 345. Martens, G., *Nouveau Recueil Général*, 3e V, p. 643.

Empire. This applies to all new regulations and to modifications of existing regulations incidental to these reforms.

Accordingly, the Imperial German Government gives its consent to measures which the French Government, after agreement with the Moroccan Government, may deem necessary to adopt for the purpose of reorganization, supervision and financial security; with the reservation that the action of France shall leave undisturbed the rights of the nations to economic equality in Morocco.

In case France should have occasion to emphasize or to extend its control and protection, the Imperial German Government, recognizing complete liberty of action for France, subject to the reservation that the commercial liberty assured by former treaties shall be maintained, will not hinder such action of France. (Art. 1.)

...
The French Government, firmly adhering to the principle of commercial liberty in Morocco, declares that it will not permit unequal treatment either in the establishment of customs duties, imposts or other taxes, or in the fixing of rates for transportation by railway, river navigation or any other form of transportation; or any matter relating to transit. (Art. 4.)

In 1911 the French Ambassador at Washington, asking the United States to adhere to this treaty between his country and Germany, made the following statement:¹⁴

... the French Republic had to take, recently, various measures ... all aimed at maintaining order and the normal development, on a footing of perfect equality, of the economic interests of the powers concerned. ...

The freedom of trade provided by the treaties shall, under the terms of the agreement, be firmly maintained and my Government has bound itself not to connive at any inequality either in the assessment of customs, duties, imposts, or other taxes or in the drawing up of tariffs of railways or any other transportation.

Thus the status of Morocco at the beginning of the World War was that of an open-door country, with all nations engaging in commerce on a basis of equality.

¹⁴ *Foreign Relations of the United States, 1911*, p. 621.

Under the Treaty of Versailles, Germany is deprived of equal treatment in Morocco, and French statesmen have claimed that other nations, by joining France in imposing abrogation of the treaties giving Germany equal treatment in Morocco, renounced by implication the advantages in Morocco which they had derived from these diplomatic arrangements.¹⁵ The United States and Great Britain, however, though they acquiesced at Versailles in depriving Germany of all rights in Morocco, insisted upon the maintenance of the open door in Morocco as regards other members of the Algeiras Conference.

China and the Hay Notes

While the open door in China was not the result of action taken by a conference such as that of Berlin or Algeiras, the problems arising from and the motives actuating the proceedings were similar. In the colonial rivalry of the nineteenth century, the principal powers did not confine their ambitions to the acquisition of the so-called unoccupied areas of the earth. Any country whose internal government showed signs of weakness was regarded as a legitimate object of exploitation. China, a vast empire, rich in raw materials and natural resources, densely populated on the coast but with a sparsely settled and little known hinterland, was from the outset the object of covetous eyes among the western powers.

China had been opened to world commerce through a number of treaties, the first of which, negotiated with Great Britain in 1842, opened five ports to foreign trade. This treaty stipulated that there should be a fair and reasonable tariff of import and export duties and in accord-

¹⁵ The attitude of France appears a decided contradiction of the position taken by that country at the Paris Peace Conference itself. See *Procès-verbaux de la commission du Maroc*, Conférence de la Paix, Paris, 1919.

ance therewith a tariff schedule was established imposing specific tariff rates equivalent to 5 per cent ad valorem. This treaty still serves as the basis of the import tariff of China. Closely following Great Britain, the United States and France secured for themselves the advantages of the British treaty—advantages which were later extended to other countries. Thus equality of trade opportunity was provided by the first treaties between China and foreign powers.¹⁶

Forcing China to accept a treaty tariff was but a beginning. Dispute followed dispute, and in every case the Chinese Government was forced by the western nations to grant concessions, trade privileges, leases or territory. A climax in this respect was reached after the Peace of Shimonoseki (1895) which ended the Chino-Japanese War. Thayer describes the position of China at that time in the following terms:¹⁷

After the Japanese defeated the Chinese in 1894, China lay like a stranded whale, apparently dead, or dying, and the chief

¹⁶ On November 30, 1923, speaking before the American Academy of Political and Social Science at Philadelphia Mr. Hughes said: "The *Empress of China*, fitted out by Robert Morris and others, sailed to Canton in 1784, and by the year 1805 thirty-seven American vessels cleared for that port. In 1843 Daniel Webster, Secretary of State, instructing Caleb Cushing as Envoy Extraordinary and Minister Plenipotentiary to China, said: 'You will signify, in decided terms and a positive manner, that the Government of the United States would find it impossible to remain on terms of friendship and regard with the Emperor if greater privileges or commercial facilities should be allowed to the subjects of any other Government than should be granted to citizens of the United States.' Most-favored-nation treatment was secured in the Treaty of 1844, with respect to which Caleb Cushing said: 'Thus, whatever progress either Government makes in opening this vast Empire to the influence of foreign commerce is for the common good of each other and of all Christendom.' Thus was laid the foundation for the policy of the open door, or equality of opportunity."

¹⁷ Thayer: *Life of John Hay*, Vol. II, p. 240.

Powers of Europe came, like fishermen after blubber, and took here a province and there a harbor, and were callous to the fact that their victim was not dead. They not only seized territory, but forced from the Chinese concessions for mines, railways, commercial privileges and spheres of influence.

The western nations had begun their scramble for concessions. They visualized China crumbling and sought spheres of influence and non-alienation pledges which would form the basis of colonial claims if China were partitioned. At this juncture the statesmanship of John Hay intervened in the interests of the integrity of Chinese territory and equality of commercial treatment. He set against the closed-door policy of any one power the general interest of all powers in the open door.

The Hay "open-door" policy is embodied in a series of diplomatic communications¹⁸ between the American Government, on the one hand, and the governments of Great Britain, Germany, France, Russia, Italy, and Japan on the other. Each of these governments accepted the obligation to extend equal commercial treatment to the citizens of all nations provided these other governments made the same pledge. Mr. Hay, after receiving favorable replies from all the countries concerned, sent instructions, dated March 20, 1900, to our diplomatic representatives in London, Paris, Berlin, St. Petersburg, Rome, and Tokyo directing them to inform the governments to which they were respectively accredited that the American Government considered their assent to the "open-door" principle final and definite. The nature of the declaration assented to is disclosed by the following excerpts from a note addressed by Mr. Hay to Mr. Choate, the American Ambassador in Great Britain. He says:¹⁹

¹⁸ *Foreign Relations of the United States, 1899*, pp. 128-143.

¹⁹ *Ibid.*, pp. 131, 132.

The Government of Her Britannic Majesty has declared that its policy and its very traditions precluded it from using any privileges which might be granted it in China as a weapon for excluding commercial rivals, and that freedom of trade for Great Britain in that Empire meant freedom of trade for all the world alike. . . . While the Government of the United States will in no way commit itself to a recognition of exclusive rights of any power within or control over any portion of the Chinese Empire under such agreements as have within the last year been made, it can not conceal its apprehension that under existing conditions there is a possibility, even a probability, of complications arising between the treaty powers which may imperil the rights insured to the United States under our treaties with China.

This Government is animated by a sincere desire that the interests of our citizens may not be prejudiced through exclusive treatment by any of the controlling powers within their so-called "spheres of interest" in China, The present moment seems a particularly opportune one for informing Her Britannic Majesty's Government of the desire of the United States to see it make a formal declaration and to lend its support in obtaining similar declarations from the various powers claiming "spheres of influence" in China, to the effect that each in its respective spheres of interest or influence:

First. Will in no wise interfere with any treaty port or any vested interest within any so-called "sphere of interest" or leased territory it may have in China.

Second. That the Chinese treaty tariff of the time being shall apply to all merchandise landed or shipped to all such ports as are within said "spheres of interest" (unless they be "free ports"), no matter to what nationality it may belong, and that duties so leviable shall be collected by the Chinese Government.

Third. That it will levy no higher harbor dues on vessels of another nationality frequenting any port in such "sphere" than shall be levied on vessels of its own nationality, and no higher railroad charges over lines built, controlled, or operated within its "sphere" on merchandise belonging to citizens or subjects of other nationalities transported through such "sphere" than shall be

levied on such similar merchandise belonging to its own nationals transported over equal distances.

During the summer following the acceptance of the open-door principle by the powers, the Boxer uprising brought wide-spread disturbance leading to foreign intervention. The integrity of China was preserved and a part of the settlement was an agreement between Great Britain and Germany (October 6, 1900) defining their policy in China:²⁰

I. It is a matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinction, and the two Governments agree on their part to uphold the same for all Chinese territory so far as they can exercise influence.

II. Her Britannic Majesty's Government and the Imperial German Government will not on their part make use of the present complication to obtain for themselves any territorial advantages in Chinese dominions and will direct their policy toward maintaining undiminished the territorial conditions of the Chinese Empire.

Powers having interests in the Far East and in China were invited to adhere to this agreement. The United States, in reply, reaffirmed its adherence to the open-door principle:²¹

The United States have heretofore made known their adoption of both of these principles (I and II). During the last year this Government invited the powers interested in China to join in an expression of views and purposes in the direction of impartial trade with that country and received satisfactory assurances to that effect from all of them. When the recent troubles were at their height this Government, on the 3d of July, once more made an announcement of its policy regarding impartial trade and the integrity of the Chinese Empire and had the grati-

²⁰ American State Papers: *Foreign Relations of the United States*, 1900, p. 354.

²¹ *Ibid.*, p. 355.

fication of learning that all the powers held similar views. And since that time the most gratifying harmony has existed among all the nations concerned as to the ends to be pursued, and there has been little divergence of opinion as to the details of the course to be followed.

It is therefore with much satisfaction that the President directs me to inform you of the full sympathy of this Government with those of her Britannic Majesty and the German Emperor in the principles set forth in the clauses of the agreement above cited.

With the possible exception of the exchange of notes²² between Mr. Lansing, American Secretary of State, and the Japanese Ambassador in Washington, Mr. Ishii, the Hay notes formed the basis of the American policy in China at the opening of the Arms Conference in 1921. China, it should be noted, was not a party to the Hay agreement. The open-door provision in the Nine-Power Treaty is, therefore, significant not only because it is a definition of the open-door principle in a formal multilateral treaty but also because China becomes thereby a party to the obligation. The treaty provides:²³

With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Contracting Powers, other than China, agree that they will not seek, nor support their respective nationals in seeking—

(a) any arrangement which might purport to establish in favour of their interests any general superiority of rights with respect to commercial or economic development in any designated region of China;

(b) any such monopoly or preference as would deprive the

²² *Treaties, Conventions, International Acts, and Agreements between the United States and Other Powers, 1910-1923*, Vol. III, p. 2720. On March 8, 1922, President Harding declared: “. . . That the so-called Lansing-Ishii agreement has no binding effect whatever, either with respect to the past or to the future, which is in any sense inconsistent with the principles and policies explicitly declared in the nine-power treaty . . .” *Cong. Record*, 2d. sess., 67th Cong., p. 3559.

²³ *Conference on the Limitation of Armament, Washington, Nov. 12, 1921, to February 6, 1922*, pp. 1625, 1626.

nations of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

Other Open-Door Agreements

For many years prior to the Treaty of Lausanne (July 24, 1923) aliens resident in Turkey had enjoyed, under treaties known as capitulations, extraterritorial privileges and certain commercial favors including equality of treatment. A maximum was fixed for import tariff rates, the limit until 1907 being set at a uniform rate of 8 per cent ad valorem. In that year, by permission of the Capitulatory Powers, Turkey was granted permission to increase its import duties to a uniform rate of 11 per cent ad valorem for a period of seven years. On the expiration of this period (October 18, 1914), Turkey requested permission to make a further increase to 15 per cent ad valorem, but before the consent of the powers had been given, the war suspended negotiations.

After the outbreak of the war Turkey repudiated the capitulations and greatly increased her tariff rates, in some cases to as high as 30 per cent ad valorem. Then, on September 14, 1916, while blockaded by the Allies, she established a high specific tariff on the general and conventional basis. Under the Treaty of Peace signed at Sèvres, on September 13, 1921, the capitulations, including the customs régime established in 1907, were again imposed on Turkey, who was thus restrained from making any change in rates without the approval of the Financial Commission.²⁴ In accordance with this treaty,

²⁴ This commission was established under the treaty for the purpose of straightening the tangled finances of the former Turkish Empire and to put the new government on a sound financial basis.

the former uniform import duty of 11 per cent ad valorem again went into effect.

Since the establishment of the new Turkish Nationalist Government, however, there had been constant trouble over the provisions of the Treaty of Sèvres. In an effort to establish order and to solve definitely the pressing problems of the Near East, a Conference assembled at Lausanne in 1922. Following the agreement ultimately reached in this conference, a treaty signed on July 24, 1923, by Turkey and the various interested powers,²⁵ abolished the judicial capitulations and provided for the reestablishment of the Turkish customs tariff of 1916, with rates multiplied by coefficients corresponding to the depreciation of the Turkish currency.²⁶

The capitulation treaties and the most-favored-nation clause had given Turkey an open-door status until the outbreak of the war. Her permanent control over these matters came with the abandonment of the judicial capitulations and the approval of the tariff of 1916 modified as above.

The Treaty of Lausanne and the commercial treaty signed at the same time by the United States and Turkey provide for unconditional most-favored-nation treatment, with the effect of continuing the principle of equality of commercial treatment on the bilateral instead of the unilateral basis.

Mandate Principle and Equality of Treatment

As a result of the World War, the Allied and Associated Powers came into possession of Turkish territory and German colonies which were distributed and classified as

²⁵ Yugoslavia at the last minute refused to sign the treaty which imposed upon her some of the reparations assessed by the former Treaty of Sèvres, these being complicated by the additional problem of oil and mineral concessions.

²⁶ *Journal of Commerce*, New York, July 25, 1923.

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follows for administration under mandates from the League of Nations:

MANDATORIES AND MANDATED TERRITORIES

<i>Class A</i>	<i>Class B</i>	<i>Class C</i>
GREAT BRITAIN: Mesopotamia Palestine	GREAT BRITAIN: Tanganyika ²⁷ Part of Togo Fraction of Kamerun	GREAT BRITAIN: Nauru AUSTRALIA: New Guinea
FRANCE: Syria	BELGIUM: Ruanda and Urundi	NEW ZEALAND: Western Samoa
	FRANCE: Kamerun Togo	SOUTH AFRICA: Southwest Africa
		JAPAN: Caroline, Mariana and Marshall Islands

Laying down the commendable principle that the well-being and development of backward peoples is a sacred trust of civilization, the Covenant of the League divides portions of the Turkish Empire and the former overseas possessions of Germany into three classes: (Class A), those that have reached a stage of development wherein their existence as independent nations can be provisionally recognized; (Class B), regions such as Central Africa, in which the mandatory must be responsible for administration; and (Class C), territories such as Southwest Africa, which may be administered as an integral portion of the mandatory. The open-door principle is guaranteed in the Covenant only in the case of the second of the three groups of mandatories. As the open-door tradition is strong in respect to Central Africa, the application of the principle

²⁷ The new British name for German East Africa, excluding the native Kingdoms of Ruanda and Urundi, which were assigned to Belgium.

in that region can be regarded only as a confirmation of a régime already in existence. In the case of the first group the open door was subsequently provided for in the mandates; in that of the third group, the Covenant's recognition of the right to administer them "as integral portions" of the mandatory immediately led to the establishment of preferential régimes.

Two special reasons may be given in support of the open-door principle in all the mandate areas, including Class C. Since the open door had existed in these territories before 1914, no allied or associated power should find itself, as a result of the war, in a less advantageous commercial position in them than it formerly occupied. Reference has already been made to the open-door régime under the Turkish Capitulations. In the case of Germany, the government, either because of treaty obligations or as a matter of policy had maintained the open door in all its possessions. Germany's policy was no more altruistic than that of other powers. Dernburg, the German colonial secretary, said: "A country's own colonies become an instrument of commercial policy, since a nation secures rights and privileges in foreign colonies only when one can offer corresponding rights and privileges in her own colonies." But as Germany looked around the world for possible colonial acquisitions, she found that most of the valuable territories had been preempted by other powers. Nevertheless, by the adoption of a vigorous policy she was able to obtain substantial and important areas. In 1914 the greater part of German-controlled territory lay in Africa. It included Togo and Kamerun on the Gulf of Guinea, German Southwest Africa, which lies between Portuguese Angola and the Orange River, and German East Africa. In the Pacific Ocean German possessions were a portion of the Island of New Guinea, the Bismarck Archipelago, the Carolines, the Pelew, Marianna, Solo-

mon, and Marshall Islands, and in addition, a portion of the Samoan group; in Asia, Germany controlled the leased territory of Kiaochow on the Peninsula of Shantung. The Congo Basin, an open-door area by the Berlin Act of 1885, was defined to include German East Africa and part of Kamerun.

In Germany's weak position in regard to colonies may be discerned the motive restraining her from the adoption of a preferential policy. Such a policy might have been imitated by such colonial powers as Great Britain and Holland, involving a loss out of all proportion to the preferential gain in colonies both insignificant and undeveloped as compared with the older and richer Dutch and British possessions. Whatever Germany's motive, the fact remains that the open door existed in the German overseas possessions.

In the second place, the mandate principle as defined in the Covenant of the League of Nations implies equality of commercial treatment and reluctance or refusal on the part of the powers to establish the open-door régime in areas committed to their trust can but raise doubts as to the good faith of advocates of the mandate principle. To resort to the practices of the old colonialism in areas proclaimed sacred trusts of civilization is to add to the evils of the old system, often candidly accepted, the sham of hypocrisy.

A Warning from Experience: The Congo

The history of the Congo furnishes an excellent example of the way in which a mandate issued by an international conference may be evaded or nullified. The resources of the Congo Free State, in the years following the Berlin Conference, consisted chiefly of ivory and certain vegetable products such as rubber, copal and palm kernels. These offered a tempting opportunity for exploitation, and

the Congo Free State, under the leadership of the autocratic Leopold, inaugurated a régime which practically nullified the principle of the open door laid down in the Berlin Act, a selfish régime injurious not only to other nations wishing to trade in the Congo basin but to the native population itself. The methods²⁸ by which the door was closed in the Congo included the land régime, taxation, the granting of concessions, the requirement that payment of taxes be made in services, and in the stipulation that goods be accepted in lieu of other remuneration for services.²⁹

Under the land régime of the Congo, the government controlled so large a part of the land that little was left for private development. By various devices the remuneration of the state agents and the dividends of the companies were made dependent on the amount of rubber produced by the natives in the different districts. This led to forced labor and left the natives little time to work for themselves. The burdens of taxation were heavy. The

²⁸ U. S. Tariff Commission: *Colonial Tariff Policies*, Chap. ii.

²⁹ Colonies in the temperate zone, where the white man can live and develop his civilization, must be distinguished from tropical colonies in which the white man merely plays the rôle of an outsider supervising the activities of a race which we, in our self-conceit, choose to call inferior. Colonization in Australia is basically a very different thing from colonization in Central Africa. The tribes of the Congo, chiefly of Bantu stock, have a comparatively simple social organization and commercially, socially and religiously have not developed an organization as complex as that of European states.

Also, a distinction must be made between colonial activity in countries like India, where the people are well advanced in their social organization and from their point of view, at least, are the equals of Europeans, and in regions inhabited by tribes like those of Central Africa.

The sociological aspect of tropical colonization is of far-reaching importance. The tendency of the white race has been to regard the tropics as a field for exploitation, and failure to appreciate the conditions necessary to the life of native peoples has frequently led to suffering. In no field have the failures of the white man been more conspicuous than in the development of the Congo.

natives were rarely allowed to pay taxes in currency, even when they were able. Transportation was virtually a monopoly of the state. Currency was non-existent or scarce. Payments to the natives were made in cloth, brassware, beads, and salt. Thus the native was kept from all contact with private traders, so that these and other similar measures nullified the open-door guaranties of the General Act of the Conference of Berlin.

Finally, in 1908, the Congo was transferred to Belgium, and the exploitation of the natives and the violation of the open-door provisions of the Berlin Act came to an end. The Leopoldian rule, however, stands as a warning that not only should the terms of mandates be carefully drawn but also the administration of the mandated area should be carefully supervised. The effective work of the Mandates Commission, under the League of Nations, shows clearly that the Commission is profiting by the experience in the Congo and elsewhere even though it is using only the power of publicity to protect the native peoples and the rights of nations other than the Mandatories. Important among its services are the revision of the administration of the Island of Nauru and the rectification of the frontier of Ruanda.³⁰

President Wilson's Third Point

President Wilson advocated as the third of his fourteen points "the removal so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance." It is probable that President Wilson had at first only a vague idea of the scope of this declaration, though he no doubt regarded it as a counter-proposal to policies of discrimina-

³⁰ Permanent Mandates Commission, A 19, 1923. VI Geneva, Aug. 24, 1923. C. P. M. 55, p. 307.

tion and exclusion, such as the Allies had proclaimed in the Economic Conference of 1916. Later, when controversy arose, he gave his point a more definite content in a letter to Senator Hitchcock.

The words I used are perfectly clear to any honest mind. They leave every nation free to determine its own economic policy, except in the one particular that its policy must be the same for all other nations, and not be compounded of hostile discriminations between one nation and another, such weapons of discrimination being left to the joint action of the nations for the purpose of disciplining those who will not submit to the general programme of justice and equality.⁴¹

Early drafts of the Covenant of the League of Nations contained no reference to the principle embodied in the third point. Mr. Wilson's advisers, however, noted the omission and prepared the declaration setting forth an American program of equal trade conditions⁴² which had its effect on later drafts of the Covenant. An Anglo-American compromise draft in 1919 referred to the security and maintenance of "freedom of transit and just treatment for the commerce of all states members of the League."⁴³ The text of the Covenant adopted at the plenary session of the Peace Conference on February 14, 1919, retained the phrase "freedom of transit" but substituted for the word "just" in the earlier draft the word "equitable." As finally adopted, Article 23 of the Covenant of the League of Nations provides that the members of the League "(e) will make provision to secure and maintain freedom of communication and of transit and equitable treatment for the commerce of all members of

⁴¹ Hearings before the Committee on Foreign Relations, U. S. Senate, 68th Cong., 1st sess., S. Doc. No. 106, 1919.

⁴² Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, Vol. II, p. 413.

⁴³ *Ibid.*, Vol. III, p. 150.

the League; in this connection the special necessities of the regions devastated during the war of 1914-1918 shall be in mind; . . ."

Fear of restricting the economic freedom of the United States made Americans hesitant about proposing a further application of the principle of commercial equality. It was expected that this subject as well as many others would later be considered in the councils of the League of Nations. Through the medium of the Economic Commission, established in connection with the Peace Conference, the British and the French continued their efforts toward making more definite the principle of commercial equality. A wide difference soon developed between the French and the British.

Sir Hubert Llewellyn Smith suggested that the first task of the Economic Commission should be

the translation of President Wilson's "third point" into the form of a Multilateral Commercial Treaty including provisions for ensuring Equality of Trade Conditions in international commerce with regard to Customs regime, Shipping, avoidance of unfair competition and the like.⁴

This proposal suggests that the general point of view of the British was generally in accord with the American proposals. On the other hand, the Franco-Italian group emphasized the necessity for freedom of trade in raw materials. The fundamental questions were avoided throughout the Peace Conference and were allowed to pass over to the League for consideration.

At the third meeting of the Council of the League of Nations, in March, 1920, article 23 of the Covenant was considered in so far as it relates to transit and in the following November the League organized an Economic

⁴ Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, Vol. II, p. 415.

Committee charged with the investigation of all matters of economic and financial interest arising from the treaty of Versailles and the Covenant. Thus far the principle of "equitable treatment," loosely defined as it is, has made slow progress toward effective adoption. The difficulties are admittedly great, but it is to be hoped that ultimately a multilateral treaty establishing the open-door principle in import and export duties and in the distribution of raw materials will be negotiated and adopted as a supplement to treaties of arbitration and security and as a part of the program to limit armaments.

Tendencies to Abandon Open-Door Pledges

In spite of numerous declarations in favor of commercial equality there is a tendency among nations to abandon the obligation on the slightest excuse. For example, the New Zealand preferential tariff has been extended to the mandate territory of Samoa in violation of the tripartite treaty between the United States, Great Britain, and Germany.²⁵ Tunis is probably the best example of the working out of such processes of encroachment. The French entered Tunis in 1881 to quell disorders which interfered with the establishment of peace in their neighboring colony of Algeria. A protectorate was almost immediately declared without making any change in the commercial relations between Tunis and her other European neighbors. These relations included commercial treaties, in force with most European nations for definite periods, guaranteeing rates of import duty limited to 8 per cent. In virtue of these treaties and the most-favored-nation clause, Tunis had an effective open-door policy as regards import charges. It was not until 1898 that France, taking advantage of the expiration of most of these treaties and

²⁵ Compare Italy's action in Somaliland. See pp. 221-222, *supra*.

the making of new agreements, obtained a relatively free hand in the country. She had made the first step toward closer relations and assimilation in 1890, when some of the products of Tunis were granted preferential rates of duty upon entering France. Then, after 1898, she established a few preferences for French trade in Tunis, and finally, in 1919, the abrogation of the last treaty³⁶ removed the only remaining barrier to complete assimilation. Since that time Tunis has been a closed-door colony, though still retaining her technical classification as a protectorate and special régime area.

Generally speaking, the policy of the open door has been losing ground since the eighties of the last century.³⁷ Nations have accepted it with growing reluctance and even when they have acquiesced in it have at times been parties to its evasion. The drift toward preference and exclusion is unmistakable, although the changed attitude of the British Government in this respect since the war may prove to be no more than a temporary reversion to earlier restrictive policies. Be that as it may, the introduction of preferential features into the tariff of Great Britain in 1919 gave momentum to a tendency toward the adoption of preferential provisions in the Crown colonies.

Failure to Observe the Open-Door Principle

The history of the open door is not a record of entirely successful policy. This is not due to any inherent unsoundness of the doctrine or the impossibility of its application but rather to lax observance of the principle on the part of nations advocating it. With the present chauvinistic

³⁶ The treaty between Tunis and Great Britain providing for the limitation to five per cent ad valorem of the duty on cotton textiles was not abrogated by the French until 1919. This rate applied to foreign countries generally.

³⁷ U. S. Tariff Commission: *Colonial Tariff Policies, 1922*, p. 78.

policies of mother countries, the open door cannot persist except as a compromise. In such circumstances, it is a temporary measure, to be observed only as and when it serves to keep peace with other nations. Any slight political change tends to create uncertainty in colonies and furnishes opportunity for renewed bargaining by which the only loser is the colony itself.

The policy is strengthened through the active support of the United States. In taking the stand that colonial powers are themselves the trustees and guardians of their colonies, and that trusteeship excludes a policy of preference in favor of the mother country, the United States has not been alone. The policy has been followed in all or in parts of the colonial empires of several powers, and international treaties and understandings have declared it to rule within wide territories, particularly in Africa.

Weakness in the Advocacy of the Open Door by the United States

Before offering further suggestions as to policy, it is desirable to mention the weak points in our own advocacy of the open door, for it must be admitted that this has not always been consistent or settled. While Secretary Hay was instrumental in obtaining declarations in favor of the open door in China, and while we have been a party to the negotiation of several open-door treaties, our attitude in other instances has implied the acceptance of preferential tariffs in colonial possessions. In the reciprocity negotiations with Canada in 1910, for instance, we admitted in general terms that colonial preferences are a purely domestic question. The prohibitive differential duty, imposed in 1903, on tin ore exported from the Straits Settlements, purposely directed against an American firm, apparently called forth only the slightest protest from our government. That the differential duty was applied in

form equally to all nations outside the empire seems to have been accepted as sufficient justification. These isolated cases, however, are not to be regarded as militating against the ultimate adoption of the open-door policy throughout the world.

More serious is the second point of weakness. Our own colonial policy may be represented as less liberal than that of any other country. The author is *not* stating as his opinion that the policy of the United States is less liberal, but only that some may argue that it is. It is not liberal from the point of view of the commercial opportunities given to foreign countries, although, from the point of view of the exploitation of the natives, a relatively favorable conclusion may be drawn.³⁸ We have practically assimilated both the Philippines and Porto Rico as regards commercial opportunity. The establishment of free trade between the United States and the Philippines and the inclusion of Porto Rico within our customs union make it difficult for us to protest against the preferential colonial tariff policies of other nations. Our rebate of the export duty on manila hemp exported from the Philippine Islands, although abolished in 1913, has been cited in justification of some of the most extreme of recent British measures. The recent Merchant Marine Act, providing for the extension of our coastwise shipping regulations to trade between the United States and the Philippines, if carried out, would mark a further step in the direction of colonial monopoly.³⁹

Abandoning the Closed Door as a Matter of Principle

We might fairly use our colonial markets for the purpose of bargaining for equality of treatment in the dependent

³⁸ Wallace, Benjamin B., "Preferential Tariffs and the Open Door," in *Annals of the American Academy*, Vol. CXII, pp. 217, 218.

³⁹ See p. 459, *et seq.*, *infra*.

colonies of other nations, but since our colonial possessions are small, we should be at a disadvantage in such negotiations. Discussion of the subject would be placed on a higher plane were the United States *as a matter of principle* to abandon its closed-door policy. A change in our commercial relations with the Philippines, with a view to harmonizing our action with our defined policy, might be the first step toward a more liberal policy and might lead to our giving Hawaii, Alaska, and Porto Rico a status palpably different from that of the "colonies" of other powers. This must be done if we are to justify their inclusion in our domestic tariff system. Nor should it be difficult to do this, for no one will contend that a nation's whole territory must be included in one continuous land mass.

Further Extension of Colonial Empire

Having brought our own colonial commercial policy into conformity with the principle of equal opportunity it would be open to us to record ourselves as fully in favor of the open door in other areas. We could then consistently oppose the further extension of colonial empires, particularly in the case of those nations pursuing preferential tariff policies. Even acquisitions by powers which have pursued an open-door policy are not to be conceded without qualification. Recent tendencies toward discrimination in the British Empire show the danger of assuming the indefinite continuance of a policy which has led, in the past, to a toleration of the wide extension of British political influence largely because it carried with it a liberal open-door commercial policy. Where we, therefore, do not oppose territorial acquisitions, we should ensure that the open door will be maintained. Experience in the Congo and elsewhere points to the need of great care in defining the scope and formulating the wording of such guaranties.

At best, the nationals of a country holding political control of a colony will have advantages in trade,⁴⁰ and it is therefore doubly important that the rights of foreigners be fully protected.

Observance of Open-Door Treaties

Among other obvious steps, the United States should oppose the weakening and abrogation of existing open-door agreements. It should decline to recognize the principle that the assumption of a protectorate over a territory in which all powers have enjoyed equal rights (especially those in which the enjoyment of such rights was guaranteed by treaty) entitles the protecting power to establish preferential duties in its favor. Neither we nor the other nations are under obligation to abandon our treaty rights, a position apparently conceded by European powers in the case of Tunis. The recent action of Great Britain in denouncing the treaty between the United States and the British possession Tonga seems to rest on a similar basis. Any restriction of the liberal doctrines formulated by the Acts of Algeciras and Berlin, or advocated in the notes exchanged in 1899 between the United States and the other powers at the request of Secretary Hay should be opposed by this country. As regards the Algeciras provisions, to which the French have already manifested hostility, the United States, as a party to this treaty, can by insisting on its treaty rights ensure the continuance of the open door in Morocco. Then, too, American representatives took part in the framing of the General Act of the Conference of Berlin, and in the drafting (in 1919) of

⁴⁰ The language, the habits of immigrants and officials, the investment of capital, the mercantile organization, the banking and shipping facilities, all tend to reinforce one another and to promote the trade between the colony and the mother country.

the proposed revision of the act.⁴¹ The terms as revised do not greatly weaken the open-door provisions of the treaty, and its ratification would put the United States in a stronger position to demand equal treatment for its commerce in the great Central African region. Furthermore, the United States,⁴² should not agree to the closing of the trade in any of the former enemy territories, whether German or Turkish. Treaties are being negotiated to secure our rights in these areas.

The most cogent reason for urging the widest adoption of the open-door policy in colonies and in countries of weak government is that it will contribute to good will and understanding among nations. Excluded nations, laboring under a sense of grievance, inevitably resent the use of political power as a means of giving the industries of another nation preferences in access to raw materials and in markets. It is not an uncommon belief to-day that the policy of the closed door, or the threat of it, has been a contributing factor to international hostility and even to war.

⁴¹Our failure to ratify the original act weakened our position in regard to evasions and violations such as those in the Congo Free State and in Italian Somalia.

⁴²As one of the principal Allied and Associated Powers to which Germany ceded her colonial territories.

CHAPTER IX

RAW MATERIALS AND FUELS

. . . For some time after the discovery of America, the first inquiry of the Spaniards, when they arrived upon any unknown coast, used to be, if there was any gold or silver to be found in the neighborhood? By the information which they received, they judged whether it was worth while to make a settlement there, or if the country was worth the conquering.

—ADAM SMITH, 1776

National Wealth or Poverty in Raw Materials

Although many of the raw materials necessary for industry are controlled by the United States and the British Empire neither of these nations is entirely self-sufficient. Cotton, copper, and petroleum are not produced in sufficient quantities within the British Empire. The United States with an adequate supply of these materials depends on outside sources for its tin, rubber, jute, and many other raw materials. Nevertheless, comparatively speaking, the United States and the British Empire are in a highly advantageous position as regards the control of raw materials.

In contrast, other industrial nations are relatively poor in the essential raw materials. Germany, through the loss of the Lorraine iron mines and the coal supply of the Saar Valley and Silesia, has had a serious blow struck at her industrial independence. Her great steel industry, dependent on coal and iron ore for its prosperity, may gradually be weakened by inability to get raw materials and may shift the fabricating skill of the Germans to the

production of finer steel products. As before the war Germany depends on the United States for cotton, upon the British Empire for wool and oil-bearing products, and on Japan for silk.

Japan holds a dominant position in raw silk production and has a monopoly of the production of natural camphor. She has copper deposits adequate for her national needs and clay deposits of a quality to produce high-grade porcelain. She also has deposits of zinc, lead, and tin and substantial supplies of sulphur and pyrites, and the forests of the northern island and of Sakhalin furnish the raw materials for her paper industry. In other raw materials, however, she is handicapped either by an inadequate supply or an actual dearth. Vegetable oil products and all the important textile materials must be imported from abroad; cotton is purchased from the United States, China, and India; wool from the British Empire; and jute from India.

To make up for her deficiencies in raw materials Japan has introduced cotton culture into Korea, is raising flax and hemp to some extent, and is undertaking sheep grazing on the mountain sides. Hydro-electric power has been developed to a degree through government aid. But these efforts, however successful they may eventually prove to be, avail little in meeting her deficiencies in raw materials. Japan's great handicap is her inadequate supply of iron ore, and this would seem to be a permanent disability in industrial development. In other countries, the steel industry, a measure of industrial greatness, has developed near the sources of supply.

Back of Japan's policy in China and Siberia is an economic motive, namely, her desire for control of sources of raw materials. Coal and iron, procurable in China, are essential to her future. The penetration of Manchuria is closely connected with valuable timber and mining con-

cessions along the railroad lines. The key to complete control she believes to lie in the Ussuri railroad, the acquisition of which is a part of her political program on the continent. Failure here may mean development, by rival powers, of industries near the sources of the raw materials and Japan's relegation to a secondary industrial position.

Belgium is dependent on her colony and on outside sources for practically all raw materials. Italy, too, is poor in raw materials. France, still largely an agricultural country, has since the war pursued a policy intended to insure adequate supplies of raw materials and continued development into an industrial state.

Political Significance of Geology and Geography

This discussion of the wealth or the poverty of nations in raw materials and fuels suggests that in the modern world geology and geography bear a close relation to their commercial policies. Energy resources and essential raw materials are not equably distributed over the earth's surface. Nations, favored geologically or climatically, tend to shape their policies to conserve, develop, and even monopolize resources within their own borders; nations, poor in resources, if they aspire to influence in international councils, seek colonies, spheres of influence, or guaranties which will insure them a supply of the essentials necessary to build a modern economic state.

The World War gave impetus to the development of commercial policies affecting raw materials. The dependence of a country's industries upon an adequate supply of raw materials was disclosed by the struggle and became the vital concern of governments. Germany's industries languished when cotton, wool, jute, silk, tungsten, nickel, zinc, palm kernels, and other products ceased to reach her from overseas. Nations, first singly and then in

coöperation,¹ devised machinery for the control and distribution of raw products; they began to consider whether they had resources enough to supply the needs of their industries, or whether they dominated the supply of any raw material to the extent that it might be used for bargaining. More significant than ever before became the dominant position of the British Empire in wool, jute, and nickel, and of the United States in cotton, oil, and copper. Anxiety concerning the supply of raw materials was evident in the economic terms imposed by Germany on Russia and Rumania in the defunct peace treaties of Brest-Litovsk and Bucharest; in France's eagerness to secure the coal supply of the Saar Valley; and in Japan's desire to control the resources of China.

Classification of Materials

As the industrialization of a nation proceeds its need for energy resources and raw materials is increasingly felt, and the resource or the material which it controls or seeks to control often determines its commercial policy. The following classification may facilitate analysis:

A. *Energy resources.* The chief sources of energy used in production and distribution are coal, oil, and water-power. Coal is by far the most important and is likely to continue to be for many years. Dr. Read has said:²

The real basis of power of a nation is its energy resources, rather than its man power strength. The modern way to use the energy of a man is to employ it in a way similar to the little detonator of the big explosive shell; the little charge sets off the big one and does an amount of work far in excess of its own

¹ Salter, J. A., *Allied Shipping Control* (British Series), Oxford University Press, New York, 1921.

² Cited in Culbertson, W. S., *Raw Materials and Foodstuffs in the Commercial Policies of Nations*, pp. 7, 8.

capacity. The energy output of an average workman is about a tenth of a horse power. The energy expended by a coal miner in a eight-hour day thus amounts to about that available from 2 pounds of coal. A Japanese miner, who gets out 1,400 pounds of coal a day, thus multiplies his energy by 700. It is somewhat like planting one grain of wheat and having 700 grow from it. The American miner gets out 8,800 pounds of coal in a day and so multiplies his energy by 4,400. There are 41 million wage earners in the United States and their energy output is a little over 4 million horse power, or only 9 times the potential energy output in the form of coal, of 100 miners. The power minerals, coal, petroleum and water power, are therefore, the real sources of strength in an industrial civilization.

Coal in proximity to iron makes possible the development of a steel industry—fundamental to a modern industrial state. Only three great coal and iron units are developed in the world—the Pittsburgh district in the United States, Central England, and the Rhine unit, consisting of Lorraine iron and Ruhr coal.

B. *Reproducible raw materials.* Raw materials which can be created over a comparatively brief period of time by cultivation or breeding may be described as reproducible raw materials. In this category fall silk, wool, rubber, cotton, and jute. Nitrates are an example of a mineral substance now reproducible from the air. Where environmental conditions are favorable the supply of these materials quickly responds to the application of capital and labor and the total stock of the world's resources is not reduced. None the less favorable conditions may be narrowly limited; and in fact serious problems of distribution, of monopoly and price, frequently arise in connection with reproducible raw materials. Japan dominates the raw silk market, the British East Indies the rubber market, India the jute market, and the United States the cotton market.

C. *Non-reproducible but partially recoverable raw*

materials. This classification embraces certain minerals and chemical substances not reproducible by the genius of man but in part recoverable. Iron is a conspicuous example. Every ton of iron ore taken from the earth lessens the world's reserves by that amount. Prospecting can increase the known reserves, but iron ore once mined can not be replaced. Iron can, however, be recovered in considerable quantities in the form of scrap. It is estimated that in an average year approximately 50 per cent of the raw material of the American steel industry consists of scrap or recovered iron. Other examples of this class, such as copper, lead, and silver readily suggest themselves.

D. *Non-reproducible, non-recoverable raw materials.* Certain raw materials are not only non-reproducible but when once used are not recoverable. Conservation of these raw materials is, therefore, imperative. Their prodigal consumption by this generation may mean rising costs and insufficiency in the next. In some cases these raw materials are available only in limited quantity while the demand for them is increasing. Within this group fall all abrasives, such as pumice, corundum, emery, and feldspar; magnesite used as cement for structural purposes and as a refractory in metallurgical operations; graphite used in lubricants and paint; fluorspar used as a flux in steel manufacture and other metallurgical operations; asbestos and mica used as insulators and almost never recovered as scrap; feldspar used in soaps and pottery.

Materials such as chromite, manganese, and tungsten are under some conditions recoverable but under others, for example when they are used as reagents in the manufacture of steel, are not recoverable.

E. *Foods.* Some raw materials, as for example, vegetable oils are also used for human food, but this classification embraces more particularly the great staple foods:

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meats, dairy products, cereals, vegetables, fruits, and tropical products. Only rarely does the movement of foods in international commerce raise an issue affecting the peaceful relation of states. The food problem, however, becomes serious when population begins to increase beyond means of subsistence as it has done in parts of Asia. Then arise the far-reaching issues of race migration and the distribution of population.³

Classification Based on Dependency

Another classification which cuts across the one just given brings out more clearly the basis for different commercial policies. Its foundation is the dependency or non-dependency of a nation upon other countries for its raw materials. No industrial nation is completely self-sufficient; the more highly industrialized it becomes the greater is its dependence. Certain nations, the United States and the British Empire for instance, are relatively rich in raw materials; others—Germany and Japan—are relatively poor.

A. *Adequate domestic supply and in some cases an exportable surplus.* Nations with an adequate supply and an exportable surplus of any raw material are at an advantage. The United States enjoys this position with respect to copper, cotton, sulphur, lead, and oil (present production) and the British Empire enjoys it with respect to jute, wool, nickel, and asbestos. A nation so situated in regard to coal and iron and certain other major raw materials has within its political control the material elements of industrial strength.

B. *Practical total dependency on an outside supply.* "It is in this group of articles," the British Royal Commission

³ Culbertson, W. S., *Raw Materials and Foodstuffs in the Commercial Policies of Nations*, Chap. xi.

said,⁴ "that the possibility of economic pressure from foreign countries controlling supplies of raw materials requires especially to be provided against, and that Government action is most needed in order to promote economic independence. In our opinion no general remedy applicable to all classes of goods exists; the action needed must vary in character with each article and the precise line to be taken in each case can only be suggested to the Governments interested after careful examination by the best expert authorities." The British Empire is dependent on the United States for its cotton, whereas the United States is dependent on the British Empire for its rubber, tin ore, and jute. In an unorganized world nations in this position with respect to any raw material become fearful and suspicious of those who control the supply, and state policies adopted reflect the efforts of private groups and governments to find security.

Economic conditions, however, usually impose definite limitations upon the extortion to be exacted by those who control the production or distribution of a raw material. Prices controlled and fixed at a relatively high level tend to bring into the market substitutes and to encourage in other areas the development of new sources of supply. The control of the sisal combine in Yucatan is clearly limited by the use of manila as a substitute. When the price of sisal reaches a certain point—unfortunately in normal times considerably above the lowest price giving a fair return to producers—consumers buy manila rather than sisal. The valorization and export taxes on coffee in Brazil, in so far as they are effective in increasing price, benefit not only Brazilian producers, but also producers in other areas, encouraging them to grow more coffee for the world market in which the price is fixed by the Brazilian

⁴ *Report of the British Royal Commission, 1917, Cd. 8462, pp. 66, et seq.*

policy. Combinations of producers are often defended on the ground that they lower distribution costs and that their chief object is a stabilization of prices in the interests alike of producer and consumer. In general, however, the price of monopoly products is fixed by the monopolist at the point where the profit per unit multiplied by the total number of units will yield the maximum net profit. In case there is no substitute, a buyers' strike is the only check upon monopolistic extortion. In addition to economic limitations on monopoly prices, there is a political factor. A nation using its monopoly control of raw materials aggressively against consumers in other countries is likely to involve itself in diplomatic difficulties.

C. *Raw materials not produced in sufficient amounts to satisfy domestic demand must be supplemented by imports from foreign countries.* The value of the classification of raw materials into reproducible and non-reproducible is emphasized by a consideration of the policy of an import tariff on raw materials produced in a country in quantities inadequate to its needs. If the environmental conditions are favorable, the quantity of the reproducible materials can be increased by cultivation and breeding. Whether or not they are so produced depends upon such factors as price and competition with other lines of production (*e.g.*, the competition of dairying with sheep husbandry). If, then, a country desires to encourage the production of such products, it can, under certain conditions, do so by imposing an import tariff to raise their price.

The wisdom of imposing import duties on the importation of non-reproducible minerals is dependent upon a number of factors. In the first place, the producer's interest should be considered. Persons owning deposits of such minerals claim the right to the opportunity to exploit them, offering the usual arguments for the protec-

tion of domestic industry, and the plea that if other interests are to be protected, they, too, are entitled to protection. Tariff duties will also encourage prospecting for new sources of supply, whereby a country may ultimately become a more important producer of a needed raw material than appears possible at a given time. The infant-industry argument may thus prove applicable.

In the second place the consumer's (manufacturer's) interest is of weight. In the case of many minerals a much cheaper supply and one of better quality can be obtained from abroad than from domestic sources. These minerals are in many instances vital to some of our basic industries. In the production of high-speed steel, for example, the manufacturer must have a substantial supply of tungsten, chromium, and manganese. The duties imposed upon these products in the United States tariff act of 1922 make it necessary to grant to the manufacturer of high-speed steel compensatory duties. These duties serve to equalize the manufacturer's position in the domestic market, but they tend to restrict his market by raising prices, and (even when he obtains the benefit of drawbacks) they handicap him in the international market where he must compete with foreign manufacturers who obtain their raw material in a free market. Against the advantage to the producer of such metals, therefore, must be weighed the disadvantage to domestic manufacturing industries prevented by the tariff from obtaining high-grade raw materials at competitive world prices.

In the third place, the question of the conservation of these metals becomes a national issue. Deposits of manganese, chromite, tungsten, and quicksilver in the United States are limited in quantity and of low grade in comparison with foreign supplies. If we continue to exploit domestic sources, the result will be not only increasingly higher costs, but possibly exhaustion of domestic supplies.

The question is: When should a nation utilize a limited supply of an exhaustible raw material? Should it permit the exhaustion of a vital and non-reproducible material for ordinary industrial uses, or should it in peace time resort to readily available and cheap foreign sources of supply in order to reserve its own limited supply for war or other emergency?

Domestic Commercial Policies

In respect to raw materials nations usually show their first concern for their conservation and development within their own borders. Where countries are favorably located from the standpoint of climate, or are favored by nature with basic deposits of important raw materials, the question of what domestic commercial policy it shall pursue is of greater moment than in countries having limited resources within their own borders.

Reference has already been made to import duties which are, perhaps, the most obvious measure used to increase a nation's self-sufficiency and to diversify its economic life. About the time that free-trade economists had reached the conclusion that tariffs should be abolished, increasing economic rivalry among nations was beginning to restore tariffs to a prominent place in commercial policies. To-day they are the most universal government measure affecting world commerce. It is in the development of manufactures that they have their chief significance. In industrial countries the manufacturing class has generally been opposed to duties on raw materials. While in European countries the rule has been to retain industrial raw materials on the free list, in the United States the political influence of the agricultural, forest, and mining interests has been exerted to maintain import duties on many raw materials.

Export Duties

Export taxes are more frequently associated with raw materials than are import taxes. In early centuries, they were common in the fiscal systems of European countries, where they arose from the general medieval practice of the sovereign imposing a tax on both outgoing and incoming commerce. In England they were levied until the Peel reforms of 1842. There, in addition to the revenue motive, the industrial motive appeared. For instance, an export duty on raw wool served to keep it at home and thereby to encourage wool manufacture.

Outside of the United States⁵ and the industrial countries of Europe, export taxes are at the present time a common feature of fiscal systems. In fact, most of the exportable products of the world except those of the leading industrial nations bear export taxes largely for revenue. The variety of products of most such countries is limited and, therefore, although the list of export taxes may be short, the rates probably affect the great volume of production. Where such monoculture prevails, export taxes are a justifiable substitute for land or income taxes and commend themselves because they are easy to collect. A plantation not yet in bearing pays no tax and, normally, the larger the crop, the greater the tax; hence, the tax imposed is commensurate with the producer's ability to pay. He must find a market abroad, and unless he has a monopoly in the world market, any export tax levied on his product is paid by him. In such circumstances the absence of export taxes is the exception. Some products of European plantations are exempt. In some countries export duties are not imposed on closely competitive products; in other cases, colonial governments have been prosperous enough to abandon them.

⁵ The levying of export taxes by either the Federal or State Government is prohibited by the Constitution of the United States.

Motives other than revenue have actuated the imposition of export taxes. They have been resorted to as a means of conserving natural resources. The extensive restrictions on the export of logs and pulpwood from Canada have been justified on this ground. But this motive is not separable from others. Conservation usually means conservation in the national sense, *i.e.*, for exploitation within the country rather than in another country. Canada restricts exports but encourages capital to build factories within her borders to exploit the same resources to which the restrictions apply. Mexico imposes an export tax on crude petroleum not to check its production but to reserve for herself in the form of taxation a part of her natural wealth.

Import taxes are essentially protective in character and within the tariff wall tend to encourage production of the materials to which they apply. Under certain conditions export taxes may also be levied for purposes of protection. Export taxes on the raw material of an industry tend to have the same protective effect as import duties on the manufactured products of that industry. They, therefore, operate to force foreign purchasers to buy finished or semi-finished products rather than the raw materials from which they are made. While the effects of import taxes are in general confined to the home market, export taxes, especially when an element of monopoly is present, may be aggressive.

Aggressive Export Taxes

The control of rubber is an excellent example of the use of commercial policy to further the interests of producers of a commodity consumed largely by another nation.⁶ Re-

⁶ The dependency of the United States on foreign sources for supplies of certain essential raw materials was emphasized by an investigation conducted under the direction of Herbert Hoover, Secretary of

strictions placed upon the exportation of rubber from the Federated Malay States in 1923, at the instance of the British Government, greatly reduced the amount of rubber available in the international market. The restrictions, although non-discriminatory in form, were a particular burden on American interests since the United States, the largest consumer of rubber, produces none of this important raw material.

An investigation⁷ by the United States Department of Commerce brought several suggestions of counter measures. One was the proposal to stimulate rubber production in the Philippines and in Latin America. Another was suggested by Mr. Hoover in a letter to Senator Capper dated March 6, 1924, proposing a buyer's combination. He said:

It is our conclusion that some relief can be reached legislatively. Our exporters and manufacturers are permitted by the Webb-Pomerene Act to undertake joint selling agencies abroad under certain restrictions. If by an extension of this Act our consumers were allowed to set up common purchasing agencies for these imported raw materials where there is positive combination in control, I am confident that our people could hold their own in their dealings with such combinations. The danger of such common purchasing agencies attempting to make improper prices against our buying public could be met by provision in the Act to include proper assurance that all consumers who wished to participate would be allowed to act through such common buying agencies with full equality of treatment, that such agencies would not be conducted for profit in themselves, and any other necessary restrictions. You already have before you a legislative

Commerce, in 1924. He listed the following imported raw materials essential to American industries believed to be controlled by foreign combination in restraint of price or distribution: Sisal, nitrates and iodine, potash, crude rubber and gutta percha, quinine, tin, mercury, coffee, and quebracho.

⁷ See various reports on raw materials by the United States Department of Commerce.

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suggestion of this order which I believe can be simplified into amendments of the Webb-Pomerene Act.

There are comparatively limited numbers of primary purchasers of each of these raw materials and common purchasing agencies would not be impossible of organization. There is active competition amongst our manufacturers in the sale of goods in the production of which these raw materials are used. It is my belief that this competition would naturally result in passing along to the public economies that can be made in the purchase of these materials but in any event provision could be made in the amendment to the Act which could adequately protect our own public against any restraint of our domestic trade by such common buying agencies.

I am confident that a unity of buyers is in the long run stronger than any combination of producers because the producer usually has the disadvantage of being compelled to maintain continuous production whereas the consumer can so organize his business if necessary as to become an intermittent purchaser.

It is my belief that joint action of our consumers dealing single handed with such combinations could in general cases at least greatly moderate the present cost of these supplies. We seek nothing further than protection against wrongful treatment and our consumers are fully alive to the necessity for proper profits to foreign producers and thus the assurance of full supplies.

The American feeling of insecurity disclosed by the investigation of rubber and other raw materials has its counterpart in the British uneasiness over their cotton supply, largely obtained from the United States. The result has been a movement in Great Britain supported by both private and public funds to encourage the growing of cotton within the British Empire. As yet it has met with no great success. The phenomena are essentially alike. Both American and British consumers are fearful and suspicious under the distorted nationalism which prevails in modern world politics. Both desire to have supplies of necessary raw materials under their political control, and in cases where such control is absent, they

endeavor to develop new sources of supply, or they adopt or consider adopting doubtful measures of possible retaliation.

Import and Export Restrictions

Prohibitions on exports or imports have in general the same purpose as export and import taxes levied for industrial purposes. But while the latter bring in some revenue, the former have the sole purpose of affecting production or distribution. Embargoes or prohibitions are more drastic than import and export taxes, recalling to mind some of the harsher practices of the days of mercantilism. Until 1914 they were not common, but during the war, when nations faced the necessity of rigidly controlling all international trade channels, they were used with increasing frequency. In the post-war readjustment, with its disturbed and unsettled economic conditions, they were retained as more effective than the ordinary tariff rates. Their general use as a means of industrial protection is to be deprecated.

Nevertheless in a world where governments undertake in many ways to shape the development of trade and industry, prohibitions cannot be unqualifiedly condemned. There is something to be said, for example, in defense of Canada's position concerning the restrictions heretofore placed on the exportation of pulpwood. Canada's forests are one of its chief sources of wealth and that country desires to use them in the development of its own industrial life. Restrictions have been placed on the exportation of the raw material without, however, restricting the exportation of pulp or paper, which can be bought as freely in Canada as in the United States. Furthermore, American capital is free to erect pulp and paper factories in Canada and to export the product without the payment of an export tax. Since restrictions in Canada apply only to Crown lands, wood cut on lands owned by American firms can be freely

exported. The Canadian restrictions became effective before the American paper industry had become so seriously dependent upon Canadian resources. Even now the measure is only partially restrictive. It can, therefore, hardly be held that the purpose of this law was to put the American paper industry in a position of "systematic inferiority."⁸

Government Aid in Price-Fixing and Stabilization

The transition is easy from aggressive export taxes and bounties on production and exportation to direct government aid in price-fixing and stabilization. It often happens that when the producers or distributors of a country have a virtual monopoly of an essential product chiefly consumed in foreign countries, they seek government aid in securing the maximum price, and thus prevent the ordinary processes of competition from keeping prices at their natural level. This is especially true when there is a prospect of overproduction. The consumers in foreign countries have a negative influence, as they are considered only in the fixing of the price at a point below that likely to bring out substitutes or new sources of supply. Examples of government aid to producers are furnished by sisal in Yucatan, citrate of lime in Italy, coffee in Brazil, and cocoa in Ecuador.

Government Monopolies

Actual government administration of raw material production is rare as compared with government supervision or support of private enterprises. Nevertheless, in actual practice the interest of government in the exploitation and

⁸ The proposed extension of the Canadian export embargo to wood cut on private lands cannot, however, be justified by the argument in the text.

distribution of essential resources is a matter of degree. Public opinion will force the use of government agencies in support of a private company controlling raw materials believed to be vital to a nation's welfare. The government may even be forced to control directly such enterprises. Government monopolies are either for profit, as in the case of the sixteenth century Portuguese control of the spice trade, or to assist the consumer, as in the case of the Nauru phosphates control by the governments of Great Britain, Australia, and New Zealand.

Control of Raw Materials outside National Boundaries

Thus far discussion has been primarily of commercial policies concerning the control of raw materials within the territorial boundaries of a nation or without open preferential measures. Another aspect of the subject may now be considered. Nations finding their own supplies of certain raw materials inadequate to their needs adopt policies designed to control raw materials in other areas. They seek colonies and spheres of influence, or they endeavor to establish financial, shipping, or other controls which will give them a degree of security with regard to needed raw materials. In colonies completely under a nation's political control various kinds of preference⁹ are established to give the industries of the mother country an advantage in securing supplies of essential raw materials.

Preferential Export Taxes

These are more commonly associated with raw materials than are preferential import taxes. In the case of a monopoly, they are distinctly aggressive and may become serious menaces to fair and equitable trade relations.

⁹ See page 185, *supra*, for the distinction between the policy of protection and the policy of preference.

In general, preferential export taxes are imposed for the purpose of diverting trade to the mother country. Just as preferential import taxes on manufactured goods imported into a colony are used to stimulate the industries of the mother country, so preferential export duties in the colonies are an aid to these same industries in obtaining their raw materials at an advantage over their foreign competitors. Such duties also benefit the direct shipping lines and the entrepôt trade. In the Spanish and Portuguese colonies additional preferences are allowed on goods exported in national ships.

Ordinary export duties, it has been pointed out, when applied to a raw material of which a group of producers has a virtual monopoly, operate aggressively against all consumers outside the barrier. Preferential export taxes may have two different effects. They may give to consumers in one country a cheaper supply of raw materials than can be obtained by consumers not benefiting by the preference; or by shutting off the supply of raw materials from excluded countries, they may destroy or prevent the establishment of an industry competing with that of the favored country. In other words, a preferential export duty extends to favored consumers (manufacturers) outside the political unit levying it the same benefits that a flat export duty confers upon consumers inside the political unit levying the duty.

Preferential export taxes with the provision that the preference be granted only when a guaranty is given that the next industrial process shall be performed in the country favored are distinctly aggressive. They are frequently not taxes at all since the rates applicable to exports to non-favored countries are high enough to direct the whole supply of the affected raw material to the favored country. If the entire supply of the raw material is forced by pro-

hibitive export taxes to seek a market in one or two favored countries, the consuming industries in those countries can scarcely fail to benefit substantially. On the other hand, if the duty is not prohibitive, and if a substantial portion of the affected raw material is exported over the maximum export duty, the tendency is to increase its price in the world market and to decrease its price in the favored market, until the difference is equal to the differential feature of the duty; if the differential be small, it may not produce obvious effects upon the industry.

Concessions

In addition to the more or less simple forms of commercial policy thus far reviewed, nations adopt many other devices, all of which are directed towards establishing control over raw materials essential to their industries. In some cases governments merely lend their support and encouragement to private interests seeking by combination, by long-term contracts, or by shipping control, to establish security in their raw material supplies. Governments also lend their support to obtaining for their nationals concessions from other governments, particularly in the economically less advanced parts of the world.

Concessions are grants by governments under specified rules and limitations to private interests of the right to build railroads, exploit minerals, or otherwise develop areas economically. They are particularly common in regions where government control is relatively weak and where economic conditions are backward. They may confer certain rights to exploit the resources or the labor of the area to which they apply. The granting of a concession is an act of sovereignty and is often in a degree a transfer of limited sovereign power.

In so far as they relate to raw materials and power resources, concessions include plantations, forests, minerals, petroleum, water powers, and transportation.

The granting of concessions to foreign capitalists for the exploitation of natural resources raises a number of questions of world importance. The first is the question of the exploitation of the human resources of the locality affected. Concessions are at times granted where there is an abundant supply of native labor. In other cases, when the labor supply is deficient, plantation or mine owners import labor under a contract system. In tropical areas the white man is not able to engage in manual labor and, therefore, native labor becomes essential to economic success. The native, however, is not always willing to work, and the wage offered by foreign capitalists is frequently no inducement. An effort has, therefore, been made on a number of occasions to force the native to labor. Social and political difficulties have resulted, and a number of international agreements as well as local laws have provided for the protection of the native and his rights.

Concessions should be granted upon a basis that will reduce international rivalry to the minimum. Always with due regard for local interests there should be, for example, an equal opportunity in the exploitation of the natural resources of economically backward parts of the world, in so far as they are divisible and competitive; and an equitable distribution, on the basis of quantity and quality, of the product produced under larger international concessions concerned with great mineral resources of a monopolistic character. Furthermore, concessions for the exploitation of irreplaceable natural wealth should be guarded in such way as to prevent waste and to produce the maximum benefit for the locality in which the natural resource is located.

*Energy Resources: Oil.*¹⁰

Probably no raw material has been the cause of as much international controversy as petroleum. Not only its commercial value but its strategical importance is being increasingly recognized. This is due largely to the development of the internal combustion engine and the use of petroleum and crude oils as a motive power for ships.

In 1918 the world production of petroleum was about 515,000,000 barrels of 42 gallons each. Of this amount over 68 per cent was produced in the United States and about 12.4 per cent in Mexico. From 1857 to 1918, inclusive, the world production exceeded 7½ billion barrels, the United States producing 61.4 per cent. These figures show the margin by which the United States dominates the petroleum situation of the world. But American production is probably nearing its maximum and the petroleum situation of the future is not to be judged so much by present output as by the reserves and petroleum concessions controlled by the different nations. Far-sighted men in Great Britain, realizing both the commercial and military importance of petroleum, and also the impending difficulties in the British coal situation, began before the war to prospect for oil in various parts of the world. A seemingly concerted effort by British interests to get financial control of large deposits of oil has to a large extent been successful.

Deposits of petroleum are widely scattered geographically. In the Western Hemisphere, in addition to the United States and Mexico, there are deposits in various South American countries. In Eurasia, beginning in Rumania, an oil stratum stretches southeastward through the Caucasus, Mesopotamia, Persia, India, and the Dutch East

¹⁰ Cf. 68th Cong., 1st sess. S. Doc. No. 97: *Oil Concessions in Foreign Countries*.

Indies. Various oil deposits have also been reported in China and Sakhalin. Petroleum perhaps offers the best example of the difficulties arising over the problem of concessions and the necessity of careful development of a commercial policy to deal with the question.

The leaders in the exploration for and exploitation of the oil resources of the world are the American, the British and the Dutch companies. Dr. Stanley K. Hornbeck thus summarizes the conditions under which these companies compete:¹¹

(1) The American companies operate as strictly private enterprises. They compete with each other both at home and abroad. The United States Government makes no choice among them and has no connection with or financial or commercial interest in any of them.

(2) In Great Britain, however, some companies operate as a combination of private and governmental enterprise. Coöperation, particularly in foreign enterprises, is officially and privately encouraged and is to a considerable extent a fact. The Government owns stock, encourages pioneering and gives special assistance to certain companies at certain moments and in certain regions.

(3) In the Netherlands, substantially the same is true. There, in addition, the stock of the leading oil company, the Royal Dutch, is very widely owned, especially among the official class, which gives the company a very wide support as substantially a national enterprise, not, it should be noted, as a government enterprise but as a great national interest.

¹¹ Culbertson, W. S., *Raw Materials and Foodstuffs in the Commercial Policies of Nations*, Article by Dr. Stanley K. Hornbeck, entitled "The Struggle for Petroleum."

In Burma exploitation and development of mineral resources is governed by the Mining Act of Sept. 27, 1923, which reads in part as follows: " . . . 3. A certificate of approval or a prospecting license or a mining lease shall be granted only to a person who is a British subject, or if the persons be a company or firm, only if such company or firm is shown to the satisfaction of the Local Government to be controlled by British subjects . . . " 68th Cong., 1st sess., S. Doc. No. 97, *Oil Concessions in Foreign Countries*, p. 45.

The policy of government assistance and coöperation in oil developments is illustrated by the now-abandoned San Remo Agreement initialed by representatives of France and Great Britain in April, 1920. The agreement provided for collaboration and reciprocity in those areas where the petroleum interests of the two countries could be amalgamated, and extended to Rumania, Russia, the French colonies, the British Crown Colonies, and Mesopotamia. It recited for example with respect to Mesopotamia:

The British Government undertake to grant to the French Government or its nominee 25 per cent of the net output of crude oil at current market rates which His Majesty's Government may secure from the Mesopotamian oilfields, in the event of their being developed by Government action; or in the event of a private petroleum company being used to develop the Mesopotamian oilfields, the British Government will place at the disposal of the French Government a share of 25 per cent in such company. The price to be paid for such participation to be no more than that paid by any of the other participants to the said petroleum company. It is also understood that the said petroleum company shall be under permanent British control.¹²

The insistence of the American government upon the maintenance of the open-door policy was one of the reasons for abandoning this arrangement.

International Controversies over Raw Materials

Many commercial policies affecting raw materials are primarily, if not entirely, of domestic concern. Only occasionally do import duties or revenue export duties assume international importance. However, when energy resources such as coal and oil are affected or when a monopolistic control is taken advantage of to exploit another people,

¹² *International Conciliation*, No. 166, September, 1921, p. 333.

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the interests of states may clash and serious complications result.

The unequal distribution of essential materials among the nations creates international problems. National power in dealing with similar domestic problems is regulative. Individual, corporate, and class action is restrained in the interests of order and fair dealing. Government is supported by public opinion in its effort to prevent private interests from exploiting the home market for excessive gain. But the attitude of government and people alike is strikingly different when these same private interests begin to operate overseas. They then have the approval, if not the active support, of their governments and they are regarded as performing patriotic services in holding foreign markets and securing all manner of economic advantages overseas. An interesting psychological study is afforded by contrasting the attitude of a government toward a large corporation's activities in the home market with its attitude towards the same corporation's activities in foreign countries. National governments, instead of restraining individual and corporate action in international affairs, encourage and even approve it. A case in point is the exemption from the provisions of our anti-trust laws ¹³ of corporations engaged solely in export trade. National control, as a matter of fact, abdicates in a domain where, under present anarchistic conditions of international relations, there is no other adequate regulation.

Out of such a condition in which business is thus supported by national governments, develop the methods and the psychology of imperialism. Nations instinctively try to make themselves secure by controlling the foodstuffs and the raw materials essential to their existence. Consumers in the United States are disturbed over the control

¹³ See Chap. xi, *infra*.

of nitrates by a producers' combine in Chile and over the measures adopted by the British in the East to restrict the supply and raise the price of rubber. Consumers in Great Britain are equally uneasy about their foreign supply of oil and have made an organized effort to stimulate the production of raw cotton within the British Empire in order to free themselves from dependence upon America for cotton. Serious complications are constantly arising in the affairs of nations over commercial practices of governments or over large aggregations of private wealth operating in international trade. Industrial and trade organizations frequently gain governmental support expressed by such measures as export taxes and restrictions, preferential import and export tariffs, government monopolies, government aids to producers, such as the valorization schemes in force in the case of Ecuadorian cocoa and Brazilian coffee, and, finally, by support in the contest with financial groups for concessions to exploit agricultural, mineral, transportation and water power resources throughout the world.

Under existing chaotic conditions governing international relations nations naturally desire to control their own affairs commercially as well as politically. In this respect they feel and act in the same manner as the individuals composing them. A corporation such as the United States Rubber Company invests capital in the East Indies in order to make more certain its supply of raw material. Such reaching out into other areas is common with commercial groups and illustrates a general desire of economic units to be self-sufficing. In national commercial policy this desire reflects itself in the ambition of one to surpass others and in its determination to be free from economic dependence in case of war. If the United States and the British Empire, rich in natural resources, become excited over their partial dependence upon each other and upon

other outside sources for a few essential raw materials, what must be the feeling of apprehension in Germany, Japan, and Italy, countries to a large extent dependent upon foreign sources for their essential raw materials? In attempting to lessen the fears and suspicions of countries in such a position, it is futile to argue that channels of international trade are usually open and that supplies of raw materials are normally available. The difficulty to be overcome does not arise from any inability to get at almost all times needed supplies, and usually at reasonable prices, but from the suspicion, perhaps groundless, that a foreign combination is gouging, and that materials under the control of another political power may at any time be cut off. Nations want economic security, that is, the certainty that others cannot deprive them of necessities or subject them to extortion; and they form their policies and direct their political activities accordingly.

Imperialism Breeds Suspicion

Fear and suspicion are then determining forces in the psychology of imperialism, and their causes are by no means imaginary. Many cases might be cited of nations being held up for unreasonable prices or of their being restricted in their efforts to obtain essential raw materials. The Great War itself demonstrated how really vital are raw materials in a long-drawn-out international struggle. But fears and suspicions are not always justified, and one of the factors contributing to misunderstanding and requiring consideration in any plan of international peace is the psychological element of unjustified fear and suspicion. Nations will use all kinds of imperialistic methods to assure to themselves supplies of products essential to their industries, so long as they have no international guaranty that supplies from the outside will be available under all conditions.

Raw Materials and War

Imperialistic methods growing out of international rivalry for economic advantages have during the last fifty years been a large factor in stimulating the building of armaments. International rivalry, it is true, is seldom a purely economic matter; personal, racial, and territorial factors have their influence. However, not only are economic questions in many cases obviously the direct cause of misunderstanding but frequently other issues, when traced back to their sources, are found to have their beginning in vital economic interests. If the causes for the building of armaments during the last half of the nineteenth century could be fully stated, it would appear that the larger percentage arose from the desire of peoples to preserve or advance their material welfare.

War is no longer merely an armed conflict; it is also an economic struggle. From this point of view it is an aggravated form of trade competition. In war time the problem of the procurement of supplies for the army and the navy is enormous. No nation can continue a war without command over all the essential raw materials. Military strategy in part, therefore, consists not only in securing adequate supplies but in preventing the enemy from getting his supplies. Raw material starvation is one way to win a war.

Road to National Security

National power and national security from one point of view appear to be synonymous. Make the nation powerful by industrial, commercial, financial, and military measures and you appear to make the nation secure. But it has not so worked out. When one nation's economic life has expanded and its army and navy have grown strong, surrounding nations, feeling insecure, have attempted either singly or in combination to match the growing

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state, which in turn, believing its position threatened, has begun to feel insecure. With several powerful nations seeking security by imperialistic measures the result has been uncertainty, instability, and insecurity. Permanent national security, then, must be sought not in temporary expedients like armaments but in the firm establishment of a set of principles to regulate the relations, particularly the economic relations, of states. Security will follow only when each state accepts these principles and permits them to be applied, if necessary, against its immediate interests in order to benefit from like concessions from other states. States will obtain, for example, commercial security and certainty only by offering to other states like security and certainty. They will find true national safety in limiting their individual power and in strengthening the methods of international coöperation.

Should a detached observer, perhaps from another planet, ignorant of the nationalistic ambitions and imperialistic policies of this world, view the existing rivalry for essential raw materials, he would marvel that a world so rich in resources should be quarreling and fighting for their control. The world's supply of the essential raw materials is ample, in most cases even inexhaustible. The struggle for control of the sources is not grounded upon fear of their exhaustion but upon the fear that other powers may extend their political control over these sources and establish monopolies to the detriment of excluded industrial nations.

Problems arising in connection with raw materials raise the fundamental question of "who owns the earth?"¹⁴ Vast areas of the earth's surface are destined, under the rivalries of to-day, to remain under the sovereignty of the great colonial powers. From these areas we receive all,

¹⁴ Spurr, J. E. (ed.), *Political and Commercial Geology and the World's Resources*.

or a part, of many of the products essential to life. These include spices, cinchona bark, coffee, cocoa, tea, vanilla oil-bearing seeds and nuts, hemp, kapok, rubber, ivory goatskins, various metals, and phosphates. To concede that a nation, which holds political control over colonial areas or which has a sphere of influence in a so-called backward country, has a right to monopolize the raw materials of that area for the use of its industries is to lay the foundation for bitter international controversies. The raw materials of the world should be open to all peoples; if they were accessible to all, one of the chief causes leading to war would be uprooted.

Open-Door Principle

The discussions in this chapter point to certain obvious conclusions concerning the exploitation and distribution of the raw materials of the world. In the case of non-reproducible raw materials such as minerals or materials which cannot be reproduced within a reasonably short space of time, world peace requires that all nations have unrestricted opportunity to search for them. In order to interest capital in the work of exploitation it is frequently necessary to permit, for a limited period, extensive areas to be explored, but after the period of exploration the company receiving the concession should be required to confine its exploitation activities to a limited area and leave the remainder of the territory open to other capital. To grant exclusive concessions over large areas is simply one way to defeat the policy of equal opportunity. Nothing can justify the granting of a concession, let us say, for oil over an entire province or over a territory larger than that which can be exploited within a reasonably short time.¹⁵

¹⁵ See references in Culbertson, W. S., *Raw Materials and Food-stuffs in the Commercial Policies of Nations*, pp. 112, 113. •

Fair Price When Supply Is Controlled Monopolistically

In the case of raw materials reproducible by the efforts of man other factors enter to restrain or limit monopolistic tendencies. Efforts to monopolize them may result in the development of substitutes or in the opening up of new areas of production. These raw materials may none the less be monopolized, and their distribution may be controlled through shipping regulations, export taxes, or financial control. The problem of international monopoly through financial and commercial organization is here a factor. Such organizations should not be permitted to exact unreasonable prices from consumers in other countries. Through an international agency distribution could be so regulated that essential raw materials produced by a national group would be available at equitable prices and in equitable quantities to consumers in nations not holding political control over the raw material in question.

Conservation of World Resources

The policy of the open door is closely related to that of the conservation of world resources. It has been argued that a nation which has prodigally wasted its resources is not entitled to exploit the resources of another country, and that, therefore, preferential taxes and policies of exclusion are warranted for the purpose of conservation. It may be admitted that if a policy of exclusion is bona fide for the purpose of conserving natural resources, it has some justification. But seldom is this the case. If the policy of equal opportunity results in an unjustifiable exploitation of forests and mines, the remedy is not the closed door but the adoption of the principle of conservation in international relations.

The conservation of the world's natural resources is not a new principle in the United States; it has had offi-

cial sanction since the administration of President Roosevelt. National consideration was first given to the subject by the Conference of Governors held at the White House May 13 to 15, 1908.¹⁶ Following this conference President Roosevelt appointed Gifford Pinchot, then a most active leader in the conservation movement, as chairman of a National Conservation Commission. This commission submitted a report to Congress on January 22, 1909.¹⁷

As an outgrowth of this purely national movement came the North American Conservation Conference held in February, 1909, and participated in by Mexico, Canada, Newfoundland, and the United States. It was suggested at this conference that the President of the United States invite all nations to meet in a World Conservation Congress. The Chairman of the Conference, Mr. Pinchot, concludes his report as follows:¹⁸

The conference of delegates, representatives of the United States, Mexico, Canada, and Newfoundland, having exchanged views and considered the information supplied from the respective countries, is convinced of the importance of the movement for the conservation of natural resources on the continent of North America, and believes that it is of such a nature and of such general importance that it should become world-wide in its scope, and therefore suggests to the President of the United States of America that all nations should be invited to join together in conference on the subject of world resources and their inventory, conservation, and wise utilization.

In line with this recommendation, the United States proposed an international consideration of conservation and in February, 1909, sent the following invitation to

¹⁶ 60th Cong., 2d sess., H. Doc. No. 1425.

¹⁷ *Congressional Record*, Vol. 43, Pt. 2, p. 1273.

¹⁸ Van Hise, C. R., *The Conservation of Natural Resources, 1910*, Appendix II.

forty-five foreign countries through our diplomatic officers abroad;¹⁹

To certain diplomatic officers abroad:

Sir: There is now assembled in Washington, in response to the invitation of the President, a conference of representatives of the United States of Mexico and the Dominion of Canada to meet the representatives of the United States of America for the purpose of considering the common interests of the three countries in the conservation of their natural resources. The cordiality with which the neighboring Governments accepted the invitation is no less an augury of the success of this important movement than is the disposition already shown by the conference to recognize the magnitude of the question before them. While recognizing the imperative necessity for the development and use of the great resources upon which the civilization and prosperity of nations must depend, the American Governments realize the vital need of arresting the inroads improvidently or unnecessarily made upon their national wealth. They comprehend also that as to many of their natural resources more than a merely conservative treatment is required; that reparatory agencies should be invoked to aid the processes of beneficent nature, and that the means of restoration and increase should be sought whenever practicable. They see that to the task of devising economical expenditure of resources, which, once gone, are lost forever, there should be superposed the duty of restoring and maintaining productiveness wherever impaired or menaced by wastefulness. In the northern part of the American hemisphere destruction and waste bring other evils in their train. The removal of forests, for instance, results in the aridity of vast tracts, torrential rainfalls break down and carry away the unprotected soil, and regions once abundant in vegetable and animal life become barren. This is a lesson almost as old as the human race. The older countries of Europe, Africa, and the Orient teach a lesson in this regard which has been too little heeded.

Anticipating the wide interest which would naturally be aroused in other countries by the present North American Conference,

¹⁹ American State Papers, *Foreign Relations of the United States, 1909*, pp. 1-3. See also Roosevelt, Theodore, *An Autobiography*, Chap. xi.

the President foresaw the probability that it would be the precursor of a world congress. By an aide-memoire of the 6th of January last the principal Governments were informally sounded to ascertain whether they would look with favor upon an invitation to send delegates to such a conference. The responses have so far been uniformly favorable, and the Conference of Washington has suggested to the President that a similar general conference be called by him. The President feels, therefore, that it is timely to initiate the suggested world conference for the conservation of national resources by a formal invitation.

By direction of the President, and with the concurrence of Her Majesty, the Queen of the Netherlands, an invitation is extended to the Government of . . . to send delegates to a conference to be held at The Hague at such date as may be found convenient, there to meet and consult the like delegates of the other countries, with a view to considering a general plan for an inventory of the natural resources of the world and to devising a uniform scheme for the expression of the results of such inventory to the end that there may be a general understanding and appreciation of the world's supply of the material elements which underlie the development of civilization and the welfare of the peoples of the earth. It would be appropriate also for the conference to consider the general phases of the correlated problem of checking and, when possible, repairing the injuries caused by the waste and destruction of natural resources and utilities and make recommendations in the interest of their conservation, development, and replenishment.

With such a world inventory and such recommendations the various producing countries of the whole world would be in a better position to coöperate, each for its own good and all for the good of all, toward the safeguarding and betterment of their common means of support. As was said in the preliminary aide-memoire of January 6:

The people of the whole world are interested in the natural resources of the whole world, benefited by their conservation, and injured by their destruction. The people of every country are interested in the supply of food and of material for manufacture in every other country, not only because these are interchangeable through processes of trade, but because a knowledge of the total supply is necessary to the intelligent treatment of each nation's share of the supply.

Nor is this all. A knowledge of the continuance and stability

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of perennial and renewable resources is no less important to the world than a knowledge of the quantity or the term remaining for the enjoyment of those resources which when consumed are irreplaceable. As to all the great natural sources of national welfare, the peoples of today hold the earth in trust for the peoples to come after them. Reading the lessons of the past aright, it would be for such a conference to look beyond the present to the future.

You will communicate the foregoing to the Government of . . . with the expression of the President's hope that we may be soon informed of its acceptance of the invitation. You will at the same time inform His Excellency that upon informal inquiry a gratifying assurance of the sympathy of the Government of the Netherlands has been received.

The end of the Roosevelt administration, however, saw the abandonment of the proposed conference. Personal and political factors interfered and the question was allowed to drop. As Dr. Scott says in his life of Robert Bacon:²⁰

President Roosevelt's administration was drawing to its close, and Mr. Bacon was no longer to be in the Department of State to urge the call of the Conference. A new administration has new policies and many a good suggestion of the old slumbers, if it does not die, in the change. But ideas survive and have a habit of making their way to the surface. It cannot be doubted that the movement for the conservation of natural resources will take visible form and shape, after the loss and destruction of the World War, and some day, when the world has grown wiser as the result of bitter experience, Mr. Bacon's conference will sit at The Hague, or elsewhere, to conserve what is left of this world's neglected and wasted resources.

International Raw Material Conference

The foregoing review of the world situation as to raw materials should make clear the need of international co-operation in the solution of two problems: (1) the equitable

²⁰ Scott, James Brown, *Robert Bacon, Life and Letters*, p. 130.

able distribution of the world's raw materials and (2) the conservation of the world's natural resources. In this era of conferences, when many of the rather minor matters as regards international peace and security are receiving so much consideration, why not devote some time to this important question? While the agenda of such a conference could be formulated only after a careful examination of all the political and economic factors, an outline of the points which should be given consideration may be suggested:

A. EQUITABLE DISTRIBUTION OF THE WORLD'S RAW MATERIALS

1. Principles to be applied.
2. Application to:
 - (a) Governments directly controlling raw materials by:
 - (1) Export taxes in conjunction with virtual monopolies; for example, nitrates, rubber, and pulpwood.
 - (2) Preferential export taxes; for example, tin ore.
 - (3) Government monopolies.
 - (b) Government regulation of private combines and monopolies.
 - (1) Combinations of producers of raw materials.
 - (2) Combinations of buyers of raw materials.
 - (3) Concessions for the exploitation of raw materials and fuels.

B. CONSERVATION OF THE WORLD'S NATURAL RESOURCES

1. Enumeration of products which should be conserved.
2. Methods of conservation.

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In respect to both A and B, but especially A, it may not be possible to obtain agreements committing the major powers to important concessions, but principles might be established first for mandated territories and then applied successively to:

1. Protectorates and other colonies under the political control of the major powers.
2. Countries, such as China and Persia, which would be parties to the agreement.
3. National territories by the voluntary consent of respective governments.

Government agencies have considered both of these problems. As already indicated, the Department of Commerce conducted in 1924 investigations into rubber, nitrates, sisal, and certain other products with particular reference to the needs of American industries. Such problems cannot be solved by purely nationalistic measures. The exactions of monopolists controlling, for example, sisal and nitrates, cannot be in the long run offset or checkmated by combinations among those who must either purchase the raw material or go out of business. Buying combines have been condemned in the United States when they have been practiced by others.²¹ If we are to concede that the world is in for trade wars, then purely nationalistic measures may be justified, but they should not be adopted until attempts have been made at intelligent international negotiations.

²¹ Federal Trade Commission: *Coöperation in American Export Trade*, and *Export of the Alien Property Custodian*.

CHAPTER X

FOREIGN LOANS AND INVESTMENTS

. . . One of the greatest dangers to peace lies in the economic pressure to which people find themselves subjected. One of the most practical things to be done in the world is to seek arrangements under which such pressure may be removed, so that opportunity may be renewed and hope may be revived. There must be some assurance that effort and endeavor will be followed by success and prosperity. In the making and financing of such adjustments there is not only an opportunity, but a real duty, for America to respond with her counsel and her resources. Conditions must be provided under which people can make a living and work out of their difficulties. But there is another element, more important than all, without which there can not be the slightest hope of a permanent peace. That element lies in the heart of humanity. Unless the desire for peace be cherished there, unless this fundamental and only natural source of brotherly love be cultivated to its highest degree, all artificial efforts will be in vain. Peace will come when there is a realization that only under a reign of law, based on righteousness and supported by the religious conviction of the brotherhood of man, can there be any hope of a complete and satisfying life. Parchment will fail, the sword will fail, it is only the spiritual nature of man that can be triumphant.

—CALVIN COOLIDGE, MARCH 4, 1925

United States as a Capital Market

The United States since the World War has become an important, perhaps the most important, market for capital. Borrowers, both governmental and private, are turning to us for funds. It behooves us to consider carefully this new economic phenomenon which marks our national life. The export of capital not only concerns the borrower and the lender, but it also sets in motion forces which in time

may involve the interests of our entire people. A loan of private capital to a foreign government or an investment in the development of a mine or a railroad in another country starts new currents of trade, and, what is more important, often creates political or social complications of far-reaching consequence.

Since, therefore, we have only recently become a great creditor nation, it will be possible to avoid some of the mistakes of other nations by consciously defining our standards and policies in regard to the export of American capital, so that while we are contributing our resources toward the material progress of the world we may at the same time retain and advance the ideals for which our country stands.

Modern Export of Capital a New Phenomenon

The investment of funds in foreign countries, which to-day has such an important effect on the foreign policies of nations, was not unknown before the industrial revolution,¹ when it frequently took the form of loans to needy monarchs. The money lenders of Lombardy and Venice, the Fuggers of Germany, and the banks of Amsterdam loaned money to European rulers and frequently were important factors in molding public policy. These early beginnings of international finance were the forerunners of a much more significant development which is in some respects essentially different in its social and political effect.

In Chapter I a summary was made of the development and effects of the industrial revolution which, in the last part of the eighteenth century, resulted in the factory system and its large-scale production and ultimately in the search for foreign markets.

* ¹ See Chap. 1, p. 5, *supra*.

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Another manifestation of the expanding economic life of western nations is the export of capital. The real conquest of the non-European world was not the territorial expansion which took place in the sixteenth, seventeenth, and eighteenth centuries, when the Portuguese, Spanish, Dutch, British, and French were laying the foundation of their colonial empires, but the investment abroad of the capital of the great western industrial nations in railways, in mines, and in other economic ventures which began to open up the less-developed parts of the world. Investments and concessions abroad were often more profitable than home enterprises. Capital gathered together by the banking and investment houses flowed to every quarter of the globe, seeking opportunities for gain. As a result of this continued tendency private business organizations of the great industrial nations have invested in foreign securities and lent funds to foreign governments in enormous amounts. The investment of private capital in widely varied enterprises has spread like a network over the earth's surface. Large returns offered by the exploitation of frontier countries have attracted the capital of highly industrialized nations, both because of the attractive prospects held out and because such investments create markets for growing industries. The ramifications of private investment under the guidance of bankers, promoters, and political leaders extend to every quarter of the globe.

Effect on Trade

This outflow of capital, it should be recalled, does not necessarily mean the actual movement of gold. More often it consists of the extension or loan of credit to foreign interests for a consideration, the value being ordinarily exported as capital goods. Its first effect is usually to

stimulate the export of goods from the lending country, and later, if the anticipated interest or dividends are paid, to stimulate imports into the lending from the borrowing country. More especially are imports into the lending country stimulated during the repayment of the principal. The ultimate tendency is similar to that of any trading: an equalizing directly or indirectly through third countries of the inflow and outflow of imports and exports.

The operation of international exchange is exceedingly complex, in that all the trade relations of a lending country tend to affect the course of the exchanges, as will be shown by simple illustration. Let it be assumed that an American citizen invests \$10,000 in a railroad enterprise in China. He purchases securities from the American syndicate floating the Chinese loan and turns over to the syndicate cash or credit to that amount. The building of the railroad begins in China, and steel rails are ordered from an American plant. The \$10,000 loaned by the American citizen is transferred to the American manufacturer in payment for the steel rails, and the capital borrowed by China goes abroad in the form of steel rails. In time the railroad begins to earn dividends, and \$500 becomes due the American citizen holding the securities. This money is sent to him in the form of a bill of exchange, through a process somewhat as follows: About the time the \$500 becomes due the American citizen, a merchant exporting from China, sends to the United States, let us say, carpet wools, to the value of \$500, and arranges for collection through some bank in China dealing in foreign exchange. The dividends due the American holder of the rail securities are paid by the railroad enterprise, perchance to the same bank, for transmittal to the American investor. The bank whether receiving the \$500 credit of the railway

directly or indirectly transfers it to the wool exporter in payment for his wool, and the dividends, so far as international trade is concerned, go abroad in the form of wool exported. The \$500 paid for the wool by the American importer is not sent to China, but is used to pay the dividend due the American holder of the Chinese securities.

The fluctuations in the exchange rate between the currencies of the two countries depend upon the current balance of trade collections, the conditions of credit, and the convertibility of negotiable paper or paper currency into standard coin. In the interactions of these factors, however, lies the complexity of international exchange, the elucidation of which will not be undertaken here. While they may give rise to international bickerings, a knowledge of their details is not essential to a general understanding of the political effects of foreign investments. It is only necessary to realize that foreign investments of capital affect international trade in commodities, and so may beget frictions in the amicable adjustment of which the aid of diplomacy may be required. If the student of affairs understands the elemental economic bases of the friction, he will be able to find a remedy.

Capital-Exporting Nations

The nations whose citizens have surplus capital to export are few. From time to time such factors as war, annexation, advance in the arts, or bold departures in world trade may change a nation from an importer to an exporter of capital or vice versa. Before 1914, Great Britain, France, Belgium, and Germany were the major capital markets of the world. The World War reduced to debtor states all but Great Britain and converted the United States from a debtor nation to probably the world's primary money market.

In 1914, total French investments in other countries

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amounted to about eight billion dollars,² of which Russian government stock alone was officially estimated at about \$2,750,000,000. "The investments in Bulgaria were estimated at \$140,000,000 and in Turkey at \$675,000,000 (Fr. 3,385,000,000)."³

German investments in 1914 have been estimated at five billion dollars but were put at seven billion by the Second Committee of Experts.⁴ They were placed in Russia, the United States and Canada, the Near East, Austria, Italy, and elsewhere.

Japanese loans to foreign governments were estimated at the close of the World War at \$315,000,000.⁵ Practically the entire amount was advanced in approximately equal amounts to Great Britain, France, Russia, and China. Japanese capital has been exported⁶ principally to South Manchuria, Eastern Inner Mongolia, Central

² Friedman, E. M., *International Finance and Its Reorganization*, p. 432.

³ *Ibid.*, p. 434. See also Lyon, Charles E., *French Government Finance*, in supplement to *Commerce Reports*, T.I.B. No. 137, p. 3.

⁴ The *Report* (1924) says: "En tenant compte de tous les éléments d'évaluation, le Comité est arrivé à la conclusion que le chiffre de 28 milliards de mark-or peut-être accepté comme représentant la valeur des avoirs allemands à l'étranger au moment de la déclaration de guerre, étant entendu que ce chiffre de 28 milliards comprend seulement les avoirs à l'étranger possédés par des ressortissants allemands résidant en Allemagne et non ceux possédés par des ressortissants allemands résidant à l'étranger. Dans cette évaluation, le montant des avoirs consistant en valeurs mobilières est déterminé d'après la valeur nominale en mark-or de ces valeurs." Speare, C. F.: *North American Review* for July, 1909, p. 85; *The Journal of the Royal Statistical Society* for July 1914. Article entitled "The Economic Relation of the British and German Empires."

⁵ *The Japan Year Book, 1920-21*, p. 369. See also *The Japan Chronicle Supplement*, November 30, 1922.

⁶ In the final analysis "lending" money, "exporting" capital, and "investing" funds set in motion the same economic forces. They stimulate production either in the lending or some other country, and the debtor country receives the capital in war materials, court luxuries, steel rails, machinery, etc.

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China, and Siberia, and to some extent to the Philippines and the Dutch East Indies. Although no estimates of Japanese investments in China and Siberia are available, the amount is known to be large. Many of them were political. Others were made in railways and in mineral and other resources of great potential value. They include both government and private loans to the federal and provincial governments of China, to industrial associations, and to numerous private enterprises in that country.

British investments outside the British Isles in 1914 were estimated by British statisticians at approximately twenty billion dollars, yielding an annual income of one billion dollars. Although British investments were distributed over every region of the world, more than half were in North and South America.

The geographical distribution of British foreign investments, according to an estimate made by Sir George Paish, was as follows:⁷

India and Colonies

Canada and Newfoundland . . .	£ 515,000,000
India and Ceylon	379,000,000
South Africa	370,000,000
Australia	332,000,000
New Zealand	84,000,000
West Africa.	37,000,000
Straits Settlements.	27,000,000
Total (including other colonies)	£1,780,000,000

Foreign Countries

United States.	£ 755,000,000
Argentina.	320,000,000
Brazil.	148,000,000
Mexico.	99,000,000

⁷ The figures, here given in round numbers, are taken from a statement prepared by Mr. C. K. Hobson. See *Annals of the American Academy of Political and Social Science* for November, 1916, p. 20.

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Russia.	67,000,000
Japan.	63,000,000
Chile.	61,000,000
Egypt.	45,000,000
China.	44,000,000
Uruguay.	36,000,000
Peru	34,000,000
Cuba.	33,000,000
Miscellaneous American . . .	26,000,000
Spain.	19,000,000
Turkey	19,000,000
Italy	12,000,000
Portugal	8,000,000
France	8,000,000
Germany.	6,000,000
Total (including others) . . .	<u>£1,934,000,000</u>
GRAND TOTAL	<u>£3,714,000,000</u>

Before 1914 British foreign investments were being increased by about one billion dollars a year.

The war considerably reduced the amount of British foreign investments. It has been estimated that in order to finance the purchases of war materials abroad Great Britain sold, principally in the United States, approximately one-fourth of her foreign securities,⁸ but her position as a creditor nation has not been fundamentally altered. The economic welfare of the British Empire was not seriously impaired by the war, and British experience and knowledge of political and economic conditions throughout the world have enabled Great Britain to continue to take a leading part in foreign investments.

Although for a number of years the annual savings for investment have been greater in the United States than in any other country, there were no extensive foreign investments before 1914, most of the annual surplus being reinvested in the United States. This was the result of the existence of extensive natural resources in the United

⁸ Friedman, E. M., *op. cit.*, p. 428.

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States and of the insularity of its people, whose foreign investments in 1908 were estimated at about one and one-half billion dollars.⁹ But with the war of 1914-18 came a great change. Foreign governments became indebted to the United States in the principal amount of \$10,578,509,342,¹⁰ and about two billion dollars of American securities held abroad, principally in Europe, were returned to the United States.¹¹

Considerable amounts of securities of foreign governments and foreign corporations are taken by private investors on the American money market. The securities outstanding on June 1, 1921, were estimated as follows:¹²

Government	\$1,319,096,318
State and Municipal	368,095,444
Railroad	377,437,175
Public Utility	96,316,500
Industrial	235,916,646
Total	<u>\$2,396,862,083</u>

The principal countries to which these loans were made share as follows:

Canada and Newfoundland	\$ 696,681,790
Great Britain	465,016,800
France	263,472,900
Mexico	185,065,675
Japan	107,802,000
Belgium	107,025,000
Chile	88,523,300
Russia	75,000,000
Cuba	71,628,800
Switzerland	66,045,000
Denmark	55,000,000
Brazil	<u>53,242,000</u>

⁹ *Review of Economic Statistics* for July, 1919, p. 230.

¹⁰ *Annual report of the Treasurer of the United States, 1923*, p. 29.

¹¹ *Review of Economic Statistics*, July, 1922, p. 213.

¹² This table was prepared from a statement in the *Federal Reserve Bulletin* for August, 1921, p. 942.

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Obviously, these loans represent only a part of the American capital exported; large sums are invested directly and never pass through investment markets.

Capital-Importing Nations

Mexico may be taken as an example of the many countries which depend primarily on outside sources for capital. The Department of Commerce of the United States has estimated American investments in Mexico at \$1,022,000,000. From a Mexican source the investments of other foreign countries in Mexico are estimated as follows:

British	\$ 680,978,000
French	291,119,000
Spanish	191,423,000
German	74,657,000
Dutch	48,569,000
Swiss.	9,000,000
Others	18,500,000
Total	<u>\$1,314,246,000</u>

Adding to this total the American investment the grand total of foreign investments in Mexico is \$2,336,246,000, of which the American represent approximately 44 per cent.

Machinery of Foreign Banking

Countries which have exported great amounts of capital have developed important banking and investing organizations. In Germany, the Deutsche Bank and other banking institutions financed such enterprises as the Bagdad railroad and directed their policy in close coöperation with the German Government. In France, the great financial houses of Paris floated the securities of foreign governments, mu-

municipal enterprises, and commercial ventures and sold them widely to the French investing public. London, with its long-established and strong financial houses, has for many years dominated the investment market. Securities, both governmental and commercial, from every part of the world have there been placed on the market. In the United States, such foreign investments as have been made were for many years placed through large financial institutions of New York. The national banks were hindered from sharing in the extension of overseas investments by the legal prohibition against branch banks. As early as 1901, however, the International Banking Corporation was organized, with headquarters in New York and branches in Latin America and the Far East. Other New York corporations had branches in Europe. Subsequent to the passage in 1913 of the Federal Reserve Act authorizing the establishment of branches by the national banks, American financial facilities abroad have been considerably extended, although the extension has not been confined to national banks. The growing importance of foreign banking in American economic life led to the enactment, in 1919, of the Edge law, permitting first the organization of acceptance banks in order to facilitate the financing of foreign trade, and secondly the establishment of debenture banks through which long-term investments in foreign enterprises might be made by the American public. One of the hindrances to the successful operation of the debenture banks is the provision in certain State laws prohibiting banking institutions from investing savings funds in foreign debentures. The foreign banking and investment machinery of the United States is in a stage of development, and it will be years before it functions to its maximum capacity in the peculiar and complex economic conditions of the United States.

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A. Classification of Foreign Loans and Investments Based on the Different Types of Borrowers and Lenders: (1) Private Capital Invested Abroad in the Development of Private Enterprises

It is often said that Great Britain or America has millions of dollars invested in this or that country. This very often means that private citizens in one or the other country have foreign investments in private enterprises. For example, an American, an automobile manufacturer, let us say, goes over into Canada and builds a factory for the production of automobiles for the Canadian market or for export to other parts of the British Empire. This is simply the transfer of American private capital into Canada for the establishment of a private enterprise. Or an American, going to Central America, establishes a fruit plantation and a great industry develops. There again private capital is developing a private enterprise. Again, an American invests in a sugar plantation in Cuba, or a British capitalist invests in rubber plantations in Malaya, or in the railroads of China or Africa. These constitute the great mass of foreign investments, private capital invested in private enterprise abroad, and of course for a profit.

This category may be illustrated by the United Fruit Company in Central America. Organized in 1899 by an amalgamation of companies engaged in the production and export of bananas, this company has grown until it now dominates the banana industry. It has banana plantations in Costa Rica, Guatemala, Honduras, British Honduras, Panama, Columbia, and Jamaica, and sugar properties in Cuba.¹³ As early as 1910 it was estimated that the

¹³ The United Fruit Company also owns land for banana plantations in Nicaragua. The investments of this company in the American tropics in 1914 were stated to exceed \$200,000,000. See Adams, Frederick Upham, *Conquest of the Tropics*, 1914, pp. 166, 217, 218, and 242.

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United Fruit Company owned 40 per cent of the banana plantations in Costa Rica and that its holdings in other regions of the tropics were equally large, or even larger.¹⁴ The company also buys from smaller producers and it was estimated that it handled in 1910 from three-fourths to four-fifths of the bananas imported into the United States.¹⁵

The United Fruit Company holds no exclusive concessions from any of the governments of the countries in which it operates,¹⁶ but its investments are such that it is able to dominate the banana industry. There are on the coast of Central America few natural harbors, and the United Fruit Company early acquired extensive tracts of land where access to deep water was easy and where rail termini were inevitable.¹⁷ The company owns and controls railroads and steamships. It also has radio facilities for communication with its ships and with the United States and other countries.

The United Fruit Company does a combined freight and passenger business both in Central America and the West Indies and between Central American countries and countries to which its products are transported. The company also engages in other activities. As Chester Lloyd Jones states, "Developing an industry in the American tropics such as this involves an undertaking of responsibilities, usually borne by state and municipal authorities. In fact, a large exploitation company in the Caribbean approaches the position of a state within a state. Government in the territories taken over was often practically

¹⁴ Palmer, Frederick, *Central America and Its Problems, 1910*, p. 219.

¹⁵ *Ibid.*, p. 218. The bulk of bananas exported come to the United States.

¹⁶ Adams, Frederick Upham, *op. cit.*, p. 86.

¹⁷ Jones, Chester Lloyd: *Caribbean Interests of the United States*, 1916, p. 297.

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non-existent. There were no efficient police, no roads, no stores, no laborers, no towns, no sanitation systems. The company must keep order; it must build roads; it must build and maintain stores; found and build towns, install sanitation systems, and generally assume, or have authority delegated to it, that would be dangerous in any ordinary 'democracy.' " ¹⁸

(2) *Private Loans to Foreign Governments*

Loans by private citizens of one country may be made to the government of another. Examples are those made by European investors to certain Caribbean states, and French loans to Russia under the old régime. More recent examples are the Australian rehabilitation loan of 1923 and the Japanese loan of 1924. In the former case the amount of the loan was about \$126,000,000, of which the American issue consisted of \$25,000,000. This loan falls due on June 1, 1943. The loan to Japan consisted of \$150,000,000 issued in the United States and Holland and £25,000,000 issued in England. It falls due February 1, 1954.

(3) *Government Loans to Governments*

In this class, the best example of which is found in the inter-allied debts resulting from the war, both the borrower and the lender are governments. In this subdivision reparations can be classed, because they are essentially an obligation of one government to another.

(4) *Government Investments in Private Enterprises*

These are comparatively rare. The most conspicuous example that comes to mind is the following investment of the British Government in the Anglo-Persian Oil Com-

¹⁸ *Ibid.*, p. 298.

pany: 5,000,000 £1 ordinary shares, fully paid; 1,000 £1 8 per cent. cumulative first preference shares, fully paid; £199,000 in 5 per cent debentures.¹⁹ Sir Hamar Greenwood stated in Parliament, in response to a question, that "the Government have a predominating interest in the Anglo-Persian Company, holding two-thirds of the ordinary shares, besides debentures. . . . The Government does not interfere with the commercial arrangements of the company and will not unless, which, of course, will never happen, they are antagonistic to the interests of the British Empire."²⁰

B. Loans or Investments Classified According to Purpose:

(1) Funds Invested in Productive Enterprises

The second general classification of loans or investments is based on the purpose of the loan: Whether the loans are productive or non-productive. It cuts across the categories of the first classification. Productive enterprises include the construction of railroads, the exploitation of raw materials, and the building of factories. British overseas' investments have been characterized by direct entry into sound development enterprises. According to Sir George Paish over 60 per cent of British foreign investments have been employed in the construction of railroads, either directly by British companies or indirectly by means of loans extended to governments of the various countries. About 14 per cent has gone into mines, nitrate, oil developments, tramways, telegraphs and telephones, gas works and water works, electric lighting and power plants, canals, and docks, and nearly as much into financial, land, and

¹⁹ The British Government has two members on the Board of Directors of this Company.

²⁰ *Parliamentary Debates*, Official Report, Fifth Series, 1920, Vol. 126, Mar. 1 to Mar. 19, p. 2367.

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*investment companies, commercial and industrial companies (among which breweries and distilleries are especially prominent), and banks.*²¹

Following is Sir George Paish's estimate of the distribution of the principal classes of British investments abroad:²²

Railroads	£1,521,000,000
Government securities	960,000,000
Mines	273,000,000
Finance, Land and Investment Companies	244,000,000
Municipalities	148,000,000
Commercials and industrials	145,000,000
Tramways	78,000,000
Banks	73,000,000
Total	<u>£3,442,000,000</u>

Thus, as British capital has flowed out into these productive enterprises in foreign lands, it has stimulated first the import of goods from Great Britain and then the export of raw materials and foodstuffs from the borrowing country back into Great Britain. The interest payments and ultimately the capital payments, are made out of the production of the industries or of the enterprises themselves.

The foreign investments of the United States have been chiefly in productive undertakings and have found their way into practically every conceivable form of enterprise. They are principally, however, in mines, railroads, telephones and telegraphs, and other public utilities; in fruit, sugar, and tobacco plantations; in cattle, banks, and industrial enterprises.

²¹ Federal Trade Commission: *Coöperation in American Export Trade, 1916*, Vol. I, p. 70.

²² *Annals of the American Academy of Political and Social Science* for November, 1916, p. 31.

(2) Funds Invested in Non-Productive Undertakings

These include funds loaned for such purposes as the maintenance of court display, the building of palaces or the provision of luxuries for courtiers and for other non-essentials. They may also include funds for the suppression of revolution within a country, or for the prosecution of foreign wars. Capital so invested is directly consumed or at best produces little income. Nothing is left to reproduce itself, and the payment of both interest and principal depends upon the taxing power of the borrowing country.

Examples of non-productive loans are those of Great Britain to Turkey for building a warship in British yards; the many loans by French banking houses under the inspiration of their government to the old régime in Russia; the funds advanced by the British public to the Khedive of Egypt,²³ and the loans of French bankers to the Shereef of Morocco.

Reparations and, in large measure, inter-allied debts must be included under non-productive loans, as can be shown by simple analysis. Under the Liberty Loan Act an American citizen surrendered, let us say, \$10,000 for a government promise to pay. This \$10,000 was lent, in the form of a credit, to an Allied government and an evidence of indebtedness was taken. The Allied government ordered \$10,000 worth of war supplies from an American manufacturer, who in receipt of the \$10,000 loaned by the American citizen, is induced to produce other wealth. This new wealth, the product of the capital of the American citizen, was exported and destroyed in the war. The total wealth of the world is thus reduced

²³ The Khedive spent great sums on railways and other improvements which should have been remunerative but which, owing to mistakes in planning, corruption in execution, and other causes, proved the reverse.

and all that remains is an obligation of the American Government to an American citizen and a corresponding obligation of a foreign government to the American Government. When in due time the principal and interest are paid to the American citizen, individuals either in the United States or abroad must create new wealth or income of which at least a portion will be taken by taxation to meet the liberty bonds.

If the debts due the United States Government by foreign governments are canceled in whole or in part, some American citizen must create wealth which the government will take by taxation and turn it over to those other American citizens who hold liberty bonds. The real process, disguised by intermediate factors, is the giving up by one citizen of goods and their consumption by another.

If the debts are not canceled, the process which is the same, is complicated by the transfer of goods from one country to another. Individuals in the debtor country must work and create wealth, a portion of which is taken by the foreign government in taxation. The transfer to the United States must be in the form of goods or services which some American citizen is willing to take and pay value for, and which in turn can be used to pay the American citizen who loaned the wealth in the first place.

The payment of reparations involves similar factors. Germany's obligation was created by the destruction of wealth. Every value now used to pay reparations must come from existing wealth in Germany or more particularly from income created by the application of capital and human labor to production. Reparation payments depend on two things: (*a*) The use of the taxing power of the German Government and economy in state management to create a budget surplus in Germany. (*b*) The revival of German production and trade until there is created an

exportable surplus of goods or services. Reducing the process to its simplest terms, the German Government will find citizens in Germany who have created wealth, will take a portion of that wealth from them by taxation, and deposit it to the account of the Agent for Reparation Payments.²⁴

This credit may have behind it immovable property such as real estate. In the transfer problem there are two elements: (a) Actual wealth must be sent abroad. (b) In the country to which it is sent, persons must be found who will take that tangible wealth and pay value for it. The transfer problem, then, involves not only the creation of net economic values in Germany which can be exported to other countries, but also the finding of some one abroad who will take the German goods and services and pay value for them.

One of the paradoxes of the reparation controversy has been that, on the one hand, the Allies have insisted on enormous reparation payments, and on the other, they have adopted commercial policies which have tended to make such payments impossible.

The distinction which has been made between productive loans and non-productive loans does not in itself imply a difference in the legal obligations. The loans made to the representative Allied governments by the United States are valid, legal contracts. The distinction between the uses made of borrowed capital, however, is valuable when larger social issues become involved. The French loans to Russia were the basis of the political alliance between France and Russia. The Russian people, from whose taxes the loans must be repaid, if they ever are, did not seek these advances or benefit by the French funds which were squandered in domestic and foreign military

²⁴ *Report of First Committee of Experts.*

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operations and in court luxuries. No one now claims, not even the bondholders, that the bonds fraudulently floated for the Caribbean states should be paid in full. It would be an effective restraint on irresponsible international banking if it became known that loans to a corrupt government or for political purposes would not have the same standing as those for *bona fide* enterprises.²⁵

C. *A Classification of Investments and Loans Based on the Nature of the Government of the Borrowing Country:*
(1) *Loans or investments in a country with a staple Government.*

Investments in such countries are merely commercial enterprises and only occasionally do they take on a political significance. Large amounts of British capital were employed in building the railroads of the United States and of the Argentine. Most of the foreign-held securities of the United States have now found their way back to

²⁵ J. M. Keynes has said: "The third leading type of foreign investment consists of loans to governments and local authorities abroad. These have a fairly ancient history, but on a great scale they are also quite modern. They reached their utmost limit of magnitude and of imprudence in France in the twenty years preceding the war. No investments have ever been made so foolish and so disastrous as the loans of France to Russia, and on a lesser scale to the Balkans, Austria, Mexico, and Brazil, between 1900 and 1914. They represented a great proportion of the national savings of the country, and nearly all has been lost. Indeed, it is probable that loans to foreign governments have turned out badly on the balance, especially at the low rates of interest current before the war. The investor has no remedy, none whatever, against default on the arising of wars and revolutions, and whenever the expectation of further loans no longer exceeds in amount the interest payable on the old ones, defaults, in fact, are world-wide and frequent. The southern states of the United States of America, Mexico, all Central America, most of South America, China, Turkey, Egypt, Greece, the whole of the Balkans, Russia, Austria, Hungary, Spain, and Portugal, have all defaulted in whole or in part at one time or another." *The Manchester Guardian Commercial*, Thursday, August 7, 1924, J. M. Keynes, "Setting a Limit to Oversea Investment," p. 176.

American holders. A striking example of this type of investment and one of great interest to the American people is the investment of American capital in Canada. Many factors have contributed to promote this particular movement of capital. These include geographical propinquity, similarity in customs, language, and taste, and close coöperation between American and Canadian banking institutions. More particularly, capital has gone to Canada for the following reasons:

(a) To establish factories behind the tariff barrier established by the Canadian Government. American manufacturers have found it more profitable to produce goods within Canada to supply the Canadian market than to produce goods in the United States and send them into Canada over the protective tariff maintained by the Dominion, and in competition with British industries whose products enjoy preferential tariff rates in Canada.

(b) By exporting from their Canadian branches, the American firms are able also to take advantage of the preferential tariff rates in other parts of the British Empire (except Australia, but this exception will probably soon terminate).

(c) To establish factories near important sources of raw materials. Manufacturers of paper, for example, have established plants in Canada near the supply of spruce and thereby have avoided the transportation of the heavy raw material to factories in the United States.

(d) To meet the requirements of the compulsory working clauses of Canadian patent legislation.²⁶ Canadian laws do not protect patents within Canadian territory unless after three years the patented article is manufactured within the country to such an extent that the reasonable requirements of the public are met.

²⁶ See Chap. ii, *supra*.

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In 1918 there were over eight million individual holders of stocks, bonds, and other securities held by incorporated and joint stock companies engaged in manufacturing industries in Canada. Taking the face value of these securities as the basis, 56 per cent were owned by holders in Canada, 34 per cent by holders in the United States, and 9 per cent by holders in Great Britain.²⁷ A report of the Canadian Government, speaking of the investment of American capital in Canadian resources, states as follows:

The United States for many years past has entered into the development of Canadian resources, supplying both capital and labour and establishing industries on the Canadian side of the Border. The nickel and asbestos production of Canada is largely in hands of American companies; many of her timber products and a proportion of pulp and paper production are also American. There are in all over 600 United States branch factories or subsidiaries in the Dominion, among which may be cited the International Nickel Company, Limited, the Montreal Locomotive Works, Limited, the Canadian Consolidated Rubber Company, Limited, the International Harvester Company, Limited, the Canadian General Electric Company, Limited, subsidiaries of the International Paper Company, the Ford Motor Company of Canada, Limited, General Motors, Limited, and the Studebaker Corporation of Canada. Canada owes much to American initiative, capital, and immigration.²⁸

(2) Capital invested in dependent colonies and in countries whose governments are too weak to exercise effective control and where external influences may, when a motive appears,²⁹ play a large part in determining the course of events.

²⁷ Canadian Department of Trade and Commerce, *Canada as a Field for British Branch Industries*, 1922, p. 117.

²⁸ *Op. cit.*, p. 45.

²⁹ These influences play a large part only after political rivalry, trade disputes, or investment of capital have led to foreign interference.

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Dependent colonies, largely tropical, controlled by European states were first exploited for trade chiefly,³⁰ but when later European capital began to flow abroad in great quantities, these areas came in for a share. British and French capital are behind the great trading and development (plantations, mines, etc.) companies operating in the Portuguese colonies of Mozambique and Angola. British capital has pushed its way north from the Cape into the heart of Africa, where, in conjunction with Belgian capital, it is developing the copper mines and other resources of Katanga. In Nigeria and elsewhere along the coast of the Gulf of Guinea British capital is active. British capital dominates India and extends its tentacles into the Malay Peninsula and Siam. The Dutch, finding their own capital insufficient, have invited foreign capital to invest in the development of the extensive resources of the Dutch East Indies.

One of the problems presented by large capital operations in tropical areas is that of native labor. The native is by nature disinclined to do the routine work of the large producing enterprises in which foreign capital interests itself. The older policy of industrial management in tropical areas was to use oppressive or compulsory measures to secure the services of the native laborers, while the modern policy has been to import indentured labor from densely populated countries. The procuring of this labor and its sanitary and civic management are undertakings fraught with risk to capital, with peril of degradation and disease to the laborers, and with danger of political dissension among the peoples and governments.

In the spread of modern business and finance over the world, the last areas to be deeply affected were the major recognized states of North Africa, Asia, and the Caribbean.

³⁰ See Chap. i, *supra*.

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Since the land grabbing of the eighties and nineties of the nineteenth century, which these states largely escaped, they have been subject to encroachments, in great measure due to the influence of investments.

China and the Great Powers

China is an important factor in international finance and furnishes many examples of the complications arising from the export of capital to areas where the government is weak and where motives exist for using finance to promote political ends. Her rich mineral resources, the undeveloped character of her transportation and communication, her lack of funds and the genius to exploit these resources herself, and the political interests of the great powers have created a far eastern question which on a number of occasions has overshadowed all others in international relations. After the Sino-Japanese War of 1894-5, which dramatically brought to the attention of the world the weakness of the Chinese Government in a contest with western military methods, there began a scramble for commercial advantages which threatened to destroy China as a national entity. China as a market was the dominant reason for the spheres of interest contest of the late nineties. Then followed the investment period. In 1898 Germany forced from China a ninety-nine-year lease for Kiao-Chow and exacted concessions for railroads and the opening of mines in the province of Shantung. This action was rapidly followed by the Russian demand for Port Arthur and by the British demand for a lease of Wei-hai-wei. China was forced to recognize spheres of influence within her own territory, to the Japanese in Fukien, to the Germans in Shantung, to the British in the Yangtze Valley and in Kwang-tung and Szechuan, to the French in Kwang-tung, Kwangsi, and Yunnan, and to the Russians in Manchuria. The great

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Powers desired these spheres of influence so that in case China should become disintegrated politically, the spheres of influence would become possessions of the respective powers and in the meantime each dominant power was to have a preferential position in the exploitation of the commerce, communications, and resources of the particular area. Against this tendency John Hay, Secretary of State, directed his policy of the open door and of the integrity of China.³¹ China's history records many loans and investments, ostensibly private but backed and even guaranteed by governments with political designs in Chinese territory until political factors color almost every phase of public and private finance in China. Western economic life has invaded China and left a vast world problem in its wake.

Overseas' Economic Expansion

What many assail as economic imperialism is merely the overseas' expansion of the economic life of nations whose finance and production of goods have advanced beyond the needs³² of the home market, a condition marking one stage in the world's economic development. This expansion is not an end in itself. It has developed problems, particularly political problems, as in China, peculiar to itself, which it should be the task of every student of international affairs to analyze with a view to proposing a constructive plan for their solution. If the economic expansion of western nations has had in the past bad results in the modern world, constructive thinking must point the way to better methods for developing the world economically and for improving the material environment

³¹ Chap. viii, p. 282, *supra*.

³² "Needs" is not used here in the social sense. Capital may find it profitable to go abroad when the social life of a people would profit if it stayed at home.

in which mankind will live. The methods employed by our modern business organization in developing the world's resources have contributed vastly to our own material comfort, and, while the need for improvement is obvious, it will profit us nothing to make a wholesale condemnation of economic institutions which are the outgrowth of those methods. To regard overseas' economic expansion as mere buccaneering is to miss the essence of the problem entirely. Much the greater part of international trade and finance is carried on by private citizens who act without the advice of or consultation with their governments, and who, far from being actuated by ulterior political motives, do not even realize the possible consequences of their everyday acts. One phase of imperialism, however, does undoubtedly deserve the appellation "buccaneering." When ostensibly private enterprises or loans are employed as smoke screens behind which political aggression is carried on, as in certain loans to the Chinese Government, the transactions deserve unqualified censure. Governments have in many cases consciously used the capital resources of their peoples to cement political alliances or to penetrate areas on which they have political designs. Such policies should be treated for what they are, acts of aggression and threats to the peace of the world.

This sweeping language should not be interpreted as a condemnation of all territorial acquisitions which have been facilitated by economic penetration. For instance, great as have been certain evils connected with the partition of tropical Africa, that partition was effected not only without disturbing the peace of Europe, but it has been, and will be, of inestimable value to the natives in replacing warfare, slavery, barbarity, and disease by peace, education, and sanitation. But the condemnation is generally applicable to attempts at economic imperialism at the expense of governments which have been strong enough to

obtain recognition as independent states and to maintain themselves to the present day.

American Policy Never Aggressive

The American Government has never under any administration used or sanctioned the use of loans, investments, or other economic measures for the purpose of aggression. It has been suggested that our resources are so extensive, and our independence of foreign products is so complete that we can afford to be virtuous. We are in reality not as independent economically as is sometimes claimed, a condition particularly evident when the dependence of the United States upon foreign countries for many vital raw materials is recalled.³³ But whatever may be the explanation of our virtue and our policies, it is utterly unjust to suggest that the American people or their government have aggressive designs on Latin America or on any other part of the world. "Dollar diplomacy" was never more than a policy of the "open door" for American citizens and of the proper protection of the business interests of American citizens in foreign countries under the accepted principles of international law.

Undesigned Economic Expansion

The distinction between deliberate economic penetration, on the one hand, and, on the other hand, legitimate business enterprise in regions where the government is weak and the sources relatively undeveloped does not imply the absence of any problem in the case of the latter. Indeed, it is what may be called undesigned, even unconscious, imperialism which presents the most difficult issues calling for national and international consideration. No complications arise when manufacturers and merchants seek new

³³ See Chap. xi, *infra*.

markets and new sources of raw materials or when investors seek opportunities to invest surplus capital in our Middle West or in Canada. But in areas where local governments provide little security, diplomacy intervenes to supplement the local deficiencies and conflicts and rivalries are likely to result. These may arise: First, between the foreign business interests and the local people and their government, and second, between the competing business interests of the different nationalities.

What policies shall governments pursue in such circumstances? What responsibilities, if any, has a people to regulate through its government the activities of its nationals abroad or to protect their vested interests acquired in good faith? By private investments abroad, whole nations have been unwittingly involved in diplomatic controversies, and mere commercial ventures have evolved into world political issues of the first magnitude. It may be emphasized that the problems arising from our expanding industrialized society are far from being evaded by rejecting a government policy of aggressive imperialism or by crying *laissez faire* and assuming that political complications can be avoided by letting traders and investors take all the risks—and opportunities!

America's Undesigned Expansion in the Caribbean

Our problems in the Caribbean and in certain other Latin American countries, at least in so far as they arise from American loans and investments, are products of business expansion without political motive.

Two types of problems should be distinguished in discussing loans and investments in the Caribbean. The first consists of those produced by the reckless and even fraudulent loans of private capital by Europeans to certain Caribbean governments. A British Government report of 1875,

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on Loans to Foreign States,³⁴ discusses the following loans which even at the present day are factors in the political and economic life of the countries affected:

The Honduras Loan of 1867
The Honduras Paris Loan of 1869
The Honduras Loan of 1870
The Santo Domingo Loan of 1869
The Costa Rico Loan of 1871
The Costa Rico Loan of 1872
The Paraguay Loan of 1871
The Paraguay Loan of 1872

The debts of Honduras continue to be cited as the extreme examples of this type of unwise financing. It is generally admitted that the Honduran Government received only a small portion of the principal. The holders of the securities have been willing for years to accept a few cents on the dollar in settlement of their claims, but the Honduran Government has not agreed to their proposals.

The following statement of facts from the 49th annual report of the Council of the Corporation of Foreign Bondholders (British) reflects the situation in Honduras from the point of view of those who hold the securities:

During 1922 the Council were advised that the Government of Honduras were favourably disposed towards a settlement of the External Debt, which has remained in total default for fifty years. Enquiries were made whether the Council were prepared to negotiate on the basis of the proposals made by the late Sir Lionel Carden and accepted by the Honduras Executive Government in 1909. These proposals, it will be remembered, fell through owing to the substitution of the Morgan scheme for the purchase of the Debt, which was not, however, carried into effect.

³⁴Gt. Brit. Parliament, House of Commons: *Report on Loans to Foreign States, 1875*, 367, pp. v to xli.

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The Council in December last forwarded to Honduras proposals for a settlement based on the Carden Agreement, but, as has so often occurred in the past, no result has been accomplished, and the Government appear to be more anxious to contract fresh debts than to pay existing obligations.

The same report summarizes the Honduran external debts as follows:

HONDURAS

External Debt

	Present Amount in Pounds	Total in Pounds
Five per cent Loan of 1867	78,800	
Coupons in arrear (April, 1873, to Oct., 1922)	<u>197,000</u>	
		275,800
Ten per cent Loan of 1867	900,700	
Coupons in arrear (Jan., 1873, to Jan., 1923)	<u>4,548,535</u>	
		5,449,235
Six and Two-thirds per cent Loan of 1869	2,176,570	
Coupons in arrear (Sept., 1873, to Sept., 1922)	<u>7,182,681</u>	
		9,359,251
Ten per cent Loan of 1870	2,242,500	
Coupons in arrear (Jan., 1873, to Jan., 1923)	<u>11,324,625</u>	
		13,567,125
Total		£28,651,411

A financial problem similar to that of the Honduran Government has involved the United States Government in the affairs of several Caribbean republics. The first case was the Dominican Republic. Since 1905 until our evacuation in 1924 our government in varying degrees directed

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the affairs of that country.³⁵ As an aid to an understanding of the American policy it will be profitable to recall the declaration of President Roosevelt, who first assumed the responsibility. On August 11, 1905, he said:³⁶

The Monroe Doctrine is not a part of international law. But it is the fundamental feature of our entire foreign policy so far as the Western Hemisphere is concerned, and it has more and more been meeting with recognition abroad.

It is out of the question to claim a right and yet shirk the responsibility for exercising that right. When we announce a policy such as the Monroe Doctrine we thereby commit ourselves to accepting the consequences of the policy, and these consequences from time to time alter.

We cannot adhere permanently to the Monroe Doctrine unless we succeed in making it evident in the first place that we do not intend to treat it in any shape or way as an excuse for aggrandizement on our part at the expense of the republics to the south of us; second, that we do not intend to permit it to be used by any of these republics as a shield to protect that republic from the consequences of its own misdeeds against foreign nations; third, that inasmuch as by this doctrine we prevent other nations from interfering on this side of the water, we shall ourselves in good faith try to help those of our sister republics, which need such help, upward toward peace and order.

* * *

But at present this country certainly would not be willing to go to war to prevent a foreign government from collecting a just debt or to back up some one of our sister republics in a refusal to pay just debts; and the alternative may in any case prove to be that we shall ourselves undertake to bring about some arrangement by which so much as is possible of the just obligation shall be paid.

* * *

I do not want to see any foreign power take possession permanently or temporarily of the custom houses of an American

³⁵ *Convention between the United States and the Dominican Republic*, signed February 8, 1907.

³⁶ *Address of President Roosevelt at Chautauqua, N. Y.*, Aug. 11, 1905.

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republic in order to enforce its obligations, and the alternative may at any time be that we shall be forced to do so ourselves.

* * *

Santo Domingo has now made an appeal to us to help . . . and not only every principle of wisdom but every generous instinct within us bids us respond to the appeal.

* * *

The immediate threat came to them in shape of foreign intervention. The previous rulers of Santo Domingo had recklessly incurred debts, and owing to her internal disorders she had ceased to be able to provide means of paying the debts. The patience of her foreign creditors had become exhausted, and at least one foreign nation was on the point of intervention and was only prevented from intervening by the unofficial assurance of this government that it would itself strive to help Santo Domingo in her hour of need.

* * *

The mere fact that we are protecting the custom houses and collecting the revenue with efficiency and honesty has completely discouraged all revolutionary movement, while it has already produced such an increase in the revenues that the government is actually getting more from the 45 per cent that we turn over to it than it got formerly when it took the entire revenue.

* * *

Under the present arrangement the independence of the island is scrupulously respected, the danger of violation of the Monroe Doctrine by the intervention of foreign powers vanishes, and the interference of our government is minimized, so that we only act in conjunction with the Santo Domingo authorities to secure the proper administration of the customs, and therefore to secure the payment of just debts and to secure the Santo Dominican Government against demands for unjust debts.

The type of problems illustrated by the loans to Honduras, the Dominican Republic, and Haiti³⁷ is likely to

³⁷ A situation analogous to that in the Dominican Republic exists in Haiti under American supervision. *Treaty between the United States and Haiti*, signed September 16, 1915. *Treaty Series No. 623*.

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recur less frequently in the future than the second type to which attention is now directed. This arises from the export of American capital to Latin America and the questions developing therefrom. This export of capital may take any one of three forms:

- (a) The funding of government debts due European creditors—a concomitant of adjustments of the first type of problems to which reference has been made.
- (b) Loans of private funds to governments and municipalities.
- (c) Investment of private funds in the development of natural resources and in other productive enterprises.

National Policies: the United States

The nations of the world have different policies in regard to the export of capital by their nationals. The American policy was indicated in a statement by the Department of State, March 3, 1922,³⁸ which referred to "the possible national interest involved" in the export of capital. Dr. Arthur N. Young, Economic Adviser of the Department of State, has thrown further light on this declaration.³⁹ "Agreements for the flotation of foreign loans," Dr. Young says, "are essentially of a public character: . . . The Department maintains a position of absolute impartiality between competing American interests. The Department does not undertake to consider the merits of foreign loans as investments. . . . The purposes to which foreign loans may be put are a matter of concern to the Department of State. It is obviously desirable that American capital going abroad should only be utilized for

³⁸ Appendix III.

³⁹ Young, A. N., *The Department of State and Foreign Loans*, address delivered at the Institute of Politics, Williamstown, Mass., Aug. 26, 1924.

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productive purposes. . . . The Government of the United States could not but object to the utilization of American capital for militaristic ends. In short, the Department of State could not be expected to view with favor the utilization of American capital abroad in such manner as to prevent or make difficult the carrying out of essential American policies, nor to promote the carrying out abroad of policies inimical to the proper interests of the United States. The Department obviously could not view with favor proposed arrangements involving provisions that might rebound to the injury of relations between the United States and the borrowing country.”⁴⁰

French Policy

Political motives have shaped the foreign loan and investment policy of France. The French, no doubt, would accept and justify this postulate. Accumulated savings were invested by French financial institutions, chiefly in foreign government securities, never in opposition to French foreign policy and frequently in furtherance of that policy. The investments were largely in the securities of Russia, Turkey, and the Balkan States. They were

⁴⁰ President Coolidge, in an address at the Golden Rule Dinner of the Near East Relief Association, at Washington, D. C., Oct. 24, 1924, said in part: “We have helped to refinance Austria, Germany, France, Belgium, and other countries. While such loans in general are believed to be in harmony with sound business principles and good morals, and have the general approbation of our Government, yet they are made without the assumption of any obligation whatever by our Government in relation to such loans. American investors receive no assurances that their loans or agreements will be supported by American arms. It is not, and has not been, the policy of this Government to collect debts by force of arms. It is gratifying that American capital has been able to facilitate the carrying into effect of the Dawes plan with its promise of economic recuperation abroad from which we as well as the peoples abroad will benefit. But loans are made without commitments on the part of this Government.”

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unproductive⁴¹ in that they generally were used by the borrowing governments for meeting budget deficits, financing foreign wars, or enlarging their armaments. Their payment depended upon the taxing power of the borrowing countries, a basis disclosed by recent experiences to be less reliable than it was once thought to be.

The assent of the French Government is necessary before a security can be quoted on the French Exchange. There is also a close affiliation between the French Ministry of Foreign Affairs and the French foreign bondholder's protective association (*Office Nationale des Valeurs Mobilières*), through which the export of French capital has often been made to serve the aims, purposes, and ambitions of the French Government. In 1906, for instance, the Czar's régime in Russia, was aided in suppressing revolution by a French loan. The political character of French loans in Russia is suggested also by the fact that, after the successful revolution in Russia, the French Government continued for several years to pay interest on Russian securities held by its nationals. A political purpose appears in the French Government loans to other countries since the war.

French investors were satisfied with the direct or implied guaranty of the foreign bonds by the French banks. It is noteworthy that France invested chiefly in the securities of Russia, Turkey, and the Balkans, a group, as Friedman says, "distinguished for industrial imprudence, financial ineptitude, and political instability."⁴²

While the French depositor-investors received only a low rate of interest, as is consistent in the best sense with

⁴¹ This was, of course, not true of all foreign French investments. Some went into productive undertakings, even when loaned to governments.

⁴² Friedman, E. M., *International Finance and Its Reorganization*, p. 224.

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government securities, the French banks, knowing the financial instability of the borrowing governments, exacted a very high rate of interest.

The results of such a policy, determined by politics and the banks rather than by the traditional thrifty instincts of the real French lenders, were that the War in 1914 not only exposed the condition of false security, but found both the French Government and the nation with foreign investments frozen, unavailable for national defense, to say nothing of the possibility of their being often impossible to collect at all. The banks had too often speculated in instability. Financial and industrial vision had been submerged in statecraft.

German Policy

During the decades preceding 1914, Germany had become more and more an exporter of capital. As a rule, it went into productive enterprises, but was often applied to political purposes. Germany's political objectives were inseparable from her nationals' financial operations, as for example, in the mines of Morocco,⁴³ in the Shantung railway concession, and in the Bagdad railway concession. These investments were lost in the war. Since the war, German investments abroad have been mainly flights from the mark, and it is too early to say to what extent they will serve for the economic penetration of neighboring countries.

Before 1914 German penetration of the Turkish Empire centered largely around the Bagdad railroad. It was a

⁴³ "The influence which investments have exercised in promoting imperialism were revealed in 1911, when the German Government manifested great interest in Morocco, largely because the Mannesmann Brothers were financially interested in Moroccan mines." Hayes, C. J. H.: *A Political and Social History of Modern Europe*, Vol. II, p. 554.

political plan, directed through the German banks,⁴⁴ to challenge the British position in the East. Like the Cape-to-Cairo railway, it is a good example of the use of private capital to aid a political purpose. Included in the Bagdad concession were mining rights in an extensive zone on both sides of the line and other important privileges. The British opposed the extension of the road to the Persian Gulf, but in 1914 negotiations were under way between Great Britain and Germany which promised a solution of the problem. Lichnowsky, the German Ambassador to Great Britain, in his famous memorandum published during the progress of the war, stated that the purpose of the proposed treaty was to divide Asia Minor into spheres of influence. The Bagdad railroad was to be extended to Basra, and navigation on the Shatt-el-Arab was to be placed under an international commission. All Mesopotamia, as far as Basra, was to become a German sphere of interest without prejudice to certain older British rights.⁴⁵

Japanese Policy

Japan likewise has used the export of capital as a means of furthering her aims and consolidating her political position in Asia. Her investments have been financed through the Yokohama Specie Bank and a combination of banks formed for the purpose of developing the resources of China, consisting of the Bank of Taiwan, the Industrial Bank of Japan, and the Bank of Chosen.

The amount of capital invested in manufacturing enterprises in China has been comparatively small, the country being so little industrialized that natural resources are much more attractive to capital. Some cotton mills, elec-

⁴⁴ Earle, Edward M., *Turkey, the Great Powers and the Bagdad Railway*, 1923.

⁴⁵ International Conciliation, June, 1918, No. 127, *The Lichnowsky Memorandum*, p. 293.

trical plants, and a few other factories have been built. The most important of these enterprises, closely related to mining, is that of the Han-Yeh-Ping Iron and Steel Company, the activities of which center at Hankow. This is a Chinese corporation which controls coal deposits, iron mines, and steel plants, and has been forced to borrow extensively from abroad. Most of the loans have been placed in Japan, and the Japanese have not only taken mortgages on the plants of the corporation but have exacted priority in supplies, price concessions, and other types of directly advantageous control. This corporation was referred to in the well-known Twenty-One Demands, in which Japan asked that China agree that "all mines in the neighborhood of those owned by the Han-Yeh-Ping Company shall not be permitted, without the consent of the said company, to be worked by other persons outside of the said company. . . ." These and other provisions of the demands were in direct contravention to the principle of the open door.

Mineral concessions in China have included a wide variety of minerals. As examples of this class of concessions may be mentioned the Fushun collieries, first controlled by the Russians and later acquired by Japan under the Convention of 1907. They are the largest producers of coal in China.

In Shantung the Germans obtained from China the right to work certain mines along the railroad. This right to mine, which had been definitely limited to four areas, was extended generally by the Japanese, but without authority, when they took over the German properties in Shantung. In the agreement between China and Japan, signed at Washington in 1922, it was stipulated that these mines should be worked by a Sino-Japanese company.

Probably the most important of the concessions in

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China have been for the construction of railroads,⁴⁶ important not only because of their economic value but because of their strategic and political value. A concession for the construction of the Chinese Eastern Railway was obtained by Russia in 1896. It provided a short-cut across Manchuria to Vladivostok and later to the ice-free harbor of Dalny, and carried with it valuable mining and trade privileges. The South Manchurian Railway system, the Dalny branch of the Chinese Eastern Railway, which was first controlled by Russia, was taken over by Japan in 1905. The Japanese Government retains the controlling interest in this railway system,⁴⁷ and most of the minority stock is owned by Japanese citizens. The Shantung railway, built by the Germans and taken over by the Japanese, was returned to China under the agreement entered into at Washington.

Policy of Great Britain: Egypt; Persia

The British Government, in rare instances, such as Disraeli's purchase of the shares of the Suez Canal in 1875 and the recent acquisition of shares in the Anglo-Persian Oil Company, has participated directly in foreign investments, but it has not aggressively directed the foreign investments of its citizens for political ends. In this respect, the British policy more nearly resembles the American than it does the French. But the British Foreign Office expects to be consulted, through the Bank of England, in the case of loans which involve or may involve Empire interests. The government frequently coöperates with the Corporation of Foreign Bondholders⁴⁸ to protect foreign loans or investments once made.

⁴⁶ Kent, P. H., *Railway Enterprise in China*.

⁴⁷ MacMurray, John V. A., *Treaties and Agreements with and Concerning China*, p. 555.

⁴⁸ See annual reports of the Council of this Corporation.

Great Britain had a natural political interest in Egypt because that country lies on the direct route of communication with her eastern possessions, particularly India, but the financial condition of the Egyptian Government was the primary cause of intervention by foreign powers.⁴⁹ The country had been brought into practical bankruptcy by the extravagance of Egyptian rulers who had borrowed freely in the British and French markets. The Egyptian debt rose from £3,000,000 in 1863 to £91,000,000 in 1876. Part of this sum had been spent on the Suez Canal and on other improvements, but a large portion of it was squandered through the personal extravagances of the Khedive, whose need of money in 1875 made it possible for Great Britain to purchase his personal share in the Suez Canal Company, and thereby gain control of that important waterway.

The finances of Egypt became so bad that Great Britain and France, in the interests of their national bondholders, finally, in 1876, established a dual control. Its operation was not entirely satisfactory and really served to prepare the way for further foreign intervention in Egyptian affairs in 1882. Although British control in Egypt was for all practical purposes supreme⁵⁰ from 1882 to 1914, Egypt was technically regarded and listed by such publications as the *Statesman's Year-Book* as not a part of the British Empire.⁵¹ This fiction was abandoned upon the declaration of the protectorate in 1914. The national movement in Egypt then became so effective that on February 28, 1922, Great Britain, in an apparent effort to

⁴⁹ Brailsford, H. N., *The War of Steel and Gold*. Harris, N. D., *Intervention and Colonization in Africa*.

⁵⁰ Supreme so far as Egypt was concerned; other powers had extensive treaty rights including vetoes on tax systems and other fiscal matters.

⁵¹ Kitchener raised at Fashoda not the British but the Egyptian flag. "Memories of Fashoda," by General Baratier, in *The Living Age*, Sept. 6, 1924.

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satisfy Mohammedan sentiment and to save the structure of the British Empire, recognized Egypt as an independent sovereign state, "reserving for future discussion the questions of security of communications in Egypt; defense; protection of foreign interests and of minorities; and the Sudan."⁵² An American minister has been named to Egypt, and Egypt has a diplomatic representative at Washington.

The clash of foreign interests in Persia illustrates further the relation which foreign investments may have to the foreign policy of the great powers. In Persia, as in China, the earlier interests of the European states were commercial, but since the later nineties, railway, mining, banking concessions, and other forms of investment have tended to become of dominant importance. In 1907 Great Britain and Russia entered into a convention, without the consent of Persia, in which they expressly recognized and delimited the spheres of influence which had in practice already existed in that country. Russia had the northern sphere and Great Britain the southern; between was a large neutral zone. Great Britain agreed not to support non-Russian political or commercial concessions in the northern part of the country, and Russia made a similar pledge in regard to the south. The chief industrial enterprise of the British is the exploitation of the petroleum resources by the Anglo-Persian Oil Company. Oil exploitation takes place chiefly at Muhammerah in the neutral zone. Upon the outbreak of the World War in 1914 British control was extended throughout the country. A commercial agreement was entered into between Great Britain and Persia on August 9, 1919. It provided for the revision of the customs tariff by a joint committee of experts and for the appointment of a British financial adviser. Under a collateral agreement a loan of

⁵² *The Statesman's Year-Book*, 1922, p. 265.

£2,000,000 was to be paid "in installments after the British financial adviser shall have taken up the duties of his office at Teheran." Fearing British domination, the Persian Parliament rejected this agreement, and an American financial adviser was appointed.

The Soviet Government of Russia, in a treaty dated February 26, 1921,⁵³ renounced all the rights which the old régime had exacted from the Persian Government. The Soviet Republic, to use the words of the agreement, "in accordance with its expressed condemnation of the colonial policy of capitalism which served and is serving as a reason for innumerable miseries and sheddings of blood, renounces the use of those financial undertakings of Tsarist Russia which had as their object the economical enfeeblement of Persia. It therefore hands over into the complete possession of the Persian people the financial sums, valuables, and in general, the assets and liabilities of the Discount Credit Bank of Persia, and similarly the movable and immovable property of the said Bank existing on the territory of Persia." A later clause in the treaty renounces all concessions granted by the Persian Government to Russians.

Responsibility for International Policy

Both the economic and the political effect of the export of capital and the policies of national governments toward this phenomenon compel a fixing of the social responsibility for its control and regulation.⁵⁴ Three respon-

⁵³ Afschar, *La Politique Européenne en Perse, Quelques pages de l'histoire diplomatique, 1921*, pp. 259-266.

⁵⁴ Tawney, R. H., *The Acquisitive Society, 1920*, p. 26: "For to admit that the criterion of commerce and industry is its success in discharging a social purpose is . . . to imply that property and economic activity exist to promote the ends of society, whereas hitherto society has been regarded in the world of business as existing to promote them."

sibilities are distinguishable: (a) The responsibility of bankers or capitalists who export capital; (b) The responsibility of governments to supervise and regulate capital exported by their nationals; (c) The responsibility of governments to coöperate in the development of international law and in the provision of machinery for the solution of such problems as cannot be solved by national governments acting singly or bargaining two by two.

First, the Responsibility of the Banker

International banking is not a purely private affair. The great majority of loan and investment arrangements, it is true, are and always will remain mere commercial ventures, but some at least are made under conditions which may reasonably be presumed to involve political and social consequences of which governments may have to take notice. For this reason international bankers have a public responsibility. This responsibility is both to the government and to the small investors who follow their advice. It is significant that the ultimate investors in a big foreign loan are the many thousands who invest an average of several thousand dollars, while having little if anything to do with fixing the terms and conditions of the loans and investments in which they participate. It is quite likely the great bankers could as easily have sold the loan had every one of its terms been different. The small investor risks his capital very largely upon information supplied by the bankers, and upon the basis of his confidence in the banking or investment house offering the securities. Even in domestic flotations, banking or investment houses are often virtually in the position of trustees for the funds of the small investor. Their responsibility is much greater in respect to foreign loans or investments, which in the nature of the case are less familiar to the public than are domestic transactions. The

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international bankers, therefore, have responsibilities both to their clients at home and to their government in regard to the terms and conditions of, and the complications and conflicts which may arise from, their international dealings.

In raising the question of the ethics of international finance it is not suggested that high standards are lacking among American international bankers, many of whom display the keenest appreciation of their responsibility. No better example of financial statesmanship could be found than the Chinese consortium. But it will do no harm to consider at this time in our economic history the basis of a code of international financial ethics and to see that it conforms with the traditional American conceptions of social justice and democratic progress.

No attempt is here made to formulate a code of ethics for those who direct international finance. But some questions may be put and some suggestions made which may indicate the subjects to be considered and the direction which future development may take.

(a) Are American bankers under an obligation to provide that the whole or a part of any loan shall be spent in the United States? Financial groups in Europe have not infrequently insisted upon a provision of this character in loan contracts. American bankers have almost always taken the position that loans of American capital abroad inevitably mean either a direct or an indirect stimulation of American export trade, and that it is consequently unnecessary to burden an international agreement with such provisions. This position, while sound in the main, is subject to two qualifications: (1) a nation's industries may need orders immediately, and it is little consolation to be assured that *in the long run* its trade will be stimulated by the loan; (2) if the making of a loan can be coupled with securing the installation of typical national machinery

or equipment, subsequent orders for repair parts and for extensions are likely to come to the same country. These qualifications are not of controlling force in favor of such special provisions in contracts, but they emphasize the influence which bankers have in the development of the economic life of the world. (b) Loans and investments should not be made where it may be presumed that they will be used to further systems of exploitation of human beings which do violence to our standards of justice. King Leopold's activities in the African Congo offer a notorious example, but peonage and kindred exploitation exist elsewhere and should not be encouraged by capital from countries in which such social conditions would not be tolerated for a moment. Fortunately, foreign enterprises are ordinarily conducted in a way socially beneficial to the native peoples. (c) The conditions attaching to a loan to a government should not condemn a people to an inequitable tax system or to an inflexible fiscal control extending to the next generation. (d) Investments and loans should be made with due consideration of the world's natural resources.⁶⁵ (e) Should funds be advanced to finance revolutions? The answer to this question is not so easy as it may appear. It is a problem similar to that raised by the Export of Arms Convention, *viz.*, "shall peoples held in political or social subjection be denied the means of liberation?" It should, however, be remembered in this connection that many revolutions are little more than predatory adventures on the part of their instigators, very different from genuine movements to ameliorate political or social conditions. (f) Shall foreign war be financed by bankers in neutral countries? Financial operations in wars between first-class powers are now so vast that only governments can carry them; perhaps all

⁶⁵ See Chap. ix.

that can be said is that bankers have it in their power to make great wars slightly more difficult. But in the case of small countries the ability to prolong a war might easily depend upon the great international bankers. (*g*) Closely related to the last two questions are the financing of munition plants and the shipment of arms in international trade. With a nation at peace, its munition plants, if in private hands, seek markets in areas in which there is war or a possibility of it. National ownership of munition plants has been urged, but this raises serious questions in the case of small nations unable to finance such industries. This question may be a suitable subject to be included in any program for the further limitation of armament. (*h*) Bankers, it need hardly be said, should not lend their influence and power to promote the aggressive imperialistic policies of their government, if such policies are advocated. But should they go beyond this? Should they refuse to promote financial operations which may bring about serious conflicts with other national groups and ultimately involve in rivalry their respective governments? Competition for railroad concessions in Asia Minor or in China or for oil concessions in Sumatra or Mesopotamia are not merely private business affairs, for the simple reason that they may under the present disorganized state of world affairs ultimately involve diplomatic controversy or even more serious intervention. Should bankers, railroad men, and oil companies therefore abstain from seeking these concessions? Should they yield the field to their rivals? Should the determination of the policy to be followed be in their direction or in that of their government?

The responsibility of the international banker at this point should not be independent of the policy of government; the joint responsibility incidentally affords a very

conclusive reason for having an affirmative constructive governmental policy.

Weakness of Laissez Faire Policy

A policy of complete non-interference by government has always found earnest advocates. They say that investors should be left to learn their lesson from defaults and repudiation; that other governments have a sovereign right to be corrupt if they like; and that it is not the function of one nation to abate a public nuisance existing in another. While such a let-alone policy has its appeal it leaves many factors out of account. If a single nation pursues it, that nation's influence, as well as the interests of its nationals, may be largely destroyed in the development of regions really in need of capital, such as China. Where conditions are economically backward, the local government is frequently weak and one of its greatest needs is money with which to establish itself. If its credit is not reinforced by the knowledge that the government of the lending country will, if necessary, use pressure to protect the interests of the lenders and to secure repayment from the weak government or its successors, the weak government may find itself unable to borrow except at ruinous rates. Even if the government of the backward country be reasonably strong, it may need great sums for developing its resources and the fact that the lending countries are committed to the policy of protecting the interest of their nationals may save the backward country significant sums in interest. Moreover, consultation with the home government may afford opportunity not only to obviate exploitation of native peoples if the loan is actually obtained but also to avoid complications with rival financial groups capable of creating complications of such proportions as to compel intervention. *Laissez faire*, may in the end, create a difficult political

situation which many will not recognize as a result of foreign investment but which, nevertheless, as a direct result of permitting the unregulated export of capital, may involve governments in a manner and to an extent that could have been avoided had they been given opportunity to consider the matter.⁵⁶

Responsibility for Positive Government Policy

The antithesis of the *laissez faire* policy is the aggressive use of capital to promote political ends, on which sufficient has been said to condemn it. It is a revolt from its excesses, all too common, which has led many persons, in a spirit of cynicism and despair, to seek refuge in the negative policy with its concomitant dangers. Reasons for a positive policy are: (a) The failure, or possible failure, of some bankers to comply with the ethical standards of the business. (b) The obvious public interest in encouraging a procedure in the export of American capital which will avoid or minimize diplomatic involvements with borrowing states. (c) The nationalistic policies of other nations toward loans and investment abroad by their nationals. Under the present world organization (or perhaps better disorganization) the United States can not escape, even if it so desires, the complications resulting from foreign loans and investments, this being particu-

⁵⁶ Mr. Oswald Garrison Villard ably presented at the Institute of Politics at Williamstown, Massachusetts, in 1924, the *laissez faire* point of view with respect to foreign loans and investments. In the discussion which followed Dr. S. K. Hornbeck made the following observation: "I would like to point out, if I understand it correctly, the underlying principles along which Mr. Villard bases his views in regard to the export of foreign capital—his views that a nation has a right within its own borders to do anything it pleases, including robbery, repudiation, confiscation, and I suppose it would extend on to murder and destruction. If that view is a sound view and if we were to accept it, it leads inevitably to the logical conclusion of not only non-intercourse but absolute national isolation. . . ."

larly true when the complications arise from rivalries with lending groups of other nations. It is not practicable to place the entire responsibility upon the bankers or banking groups. Situations which may even involve the risk of war are of public concern and demand a public policy.

The policy pursued by the American government is essentially sound in its tendencies. It is better adapted to American needs and traditions than either of the other two which have been discussed. It is a policy of supervision and regulation. It rests on the accepted principles of international law and upon America's traditional attitude toward foreign relations. Purely business ventures may be of no governmental concern, but when they assume or are likely to assume far-reaching importance in international affairs our government should not wait until the inevitable happens but should endeavor to foresee and prevent complications. A policy might be elaborated recognizing the following factors:

(a) The government will not under any conditions undertake to pass upon or assume any responsibility for a loan or investment as a business undertaking.

(b) The government will examine all loan or investment agreements or proposals to determine whether or not their terms:

First: Are in conformity with treaty provisions and established American policies;

Second: Provide fair and equitable treatment of native peoples and of foreign governments, giving them no reasonable cause for conflict with American bankers and investors.

(c) Enforcement by the government of *bona fide* contractual obligations when local law is shown to provide inadequate protection, and the protection of honest investments from confiscation. Even if it may be said that

international law now justifies such enforcement and protection, the methods and limits of permissible action stand none the less in great need of definition and restriction. Further principles must be evolved, for example, to settle conflicts between the property rights enforceable under international law and the social and political aspirations of peoples. In this connection the controversy arising out of Article 27 of the Mexican Constitution may be recalled without any question as to its merits.

(d) The "open door" or equality of treatment for the investment of capital seems to be the soundest general method for dealing with certain possible complications with other lending nations. This policy, however, should go hand in hand with the progress of international law and with international coöperation in defining and restricting the political and, possibly, the social effects of economic penetration. At present an open door policy, not sufficiently safeguarded and expressed, for instance, by a requirement that concessions be auctioned to the highest bidder regardless of nationality, might prevent a weak country from confining its concessions and borrowings to the one capitalistic country whose political ambitions it did not fear.

(e) The consortium method, subject to a consideration of the terms involved, is a commendable form of international financial coöperation and deserves the support of government. It may be greatly extended in vast areas like China and in cases involving great monopoly rights.

Making a National Policy Effective

In carrying out a government policy with respect to the investment of American capital the maximum of publicity is essential. The American people are entitled to know what the problems are and what ultimate consequences may be entailed by the investment of American

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capital in foreign countries. More formality should be introduced into the procedure of considering foreign loans and investments. This work now devolves upon the State Department and is essentially an executive function. It is suggested that it may be desirable to establish a commission similar to the World War Foreign Debt Commission, to be charged with the supervision of the export of capital and the carrying out of the government's policy in this respect. If this is not done, an authoritative and reasonably detailed statement of policy should at least be made, and from time to time thereafter statements should be given out explaining the application of the general policy in particular cases.

Furthermore, in the revision of our antiquated commercial treaties and in the negotiation of new ones on modern lines provisions relating to loans and investments should be included, varying in their terms with the economic status of the country with which the treaty is made. In a treaty with a borrowing country these would naturally differ from those in a treaty with a lending country, but they are desirable in both cases.

Responsibility for International Coöperation

Nowhere perhaps are the limitations and deficiencies of national control and regulation,⁶⁷ however carefully the provisions may be worked out, more conspicuous than in international finance affecting the commercial policies of nations. Even if bankers and national governments meet all their responsibilities in their respective provinces, something is still left to be done through international coöperation. A first essential is the codification and extension of the international law in regard to international finance. It should provide for the protection of the bor-

⁶⁷ See Appendix IX.

rowing state in case of conflict with a stronger power, inclined to be arbitrary in enforcing by its army or navy the claims of its nationals. The rules relating to governmental default and solvency need to be elaborated in the interest both of the borrowing government and of the lending public. At the second Hague Conference limitations were placed on the use of armed force to collect the debts of states. A situation requiring careful consideration arises when international law and local law conflict, especially when the local law involves a desire for social and political betterment but is in conflict with vested foreign economic rights.

Disputes between two or more lending groups, backed by their respective governments, over concessions in an undeveloped area cannot always be settled by diplomacy. Rules should be laid down to govern such situations—to regulate the distribution of economic opportunities, to provide for proceeding by the consortium method if the economic opportunities do not lend themselves to distribution among the contending national groups, and to provide rules for the settlement of disputes when they arise later.

After conference, these and similar principles could be provided in a multilateral treaty and a procedure worked out to apply the rules to particular cases. A beginning was made in the Board of Reference provided for at the Arms' Conference (1922). Commissions may be established to deal with cases arising in different regions, with appeals in appropriate cases to the World Court.

CHAPTER XI

COMPETITION AND COMBINATION IN INTERNATIONAL COMMERCE

The love and service of our Country consisteth not so much in the knowledge of those duties which are to be performed by others, as in the skilful practice of that which is done by our selves; and therefore (my Son) it is now fit that I say something of the Merchant, which I hope in due time shall be thy Vocation: Yet herein are my thoughts free from all Ambition, although I rank thee in a place of so high estimation; for the Merchant is worthily called *The Steward of the Kingdoms Stock*, by way of Commerce with other Nations; a work of no less *Reputation* than *Trust*, which ought to be performed with great skill and conscience, that so the private gain may ever accompany the publique good. And because the nobleness of this Profession may the better stir up thy desires and endeavours to obtain those abilities which may effect it worthily, I will briefly set down the excellent qualities which are required in a perfect Merchant.

11. He ought as he is a Traveller, and sometimes abiding in forraign Countreys to attain to the speaking of divers Languages, and to be a diligent observer of the ordinary Revenues and expences of forraign Princes, together with their strength both by Sea and Land, their laws, customes, policies, manners, religions, arts, and the like; to be able to give account thereof in all occasions for the good of his Countrey.

12. Lastly, although there be no necessity that such a Merchant should be a great Scholar; yet is it (at least) required, that in his youth he learn the Latine tongue, which will the better enable him in all the rest of his endeavours.

—THOMAS MUN, 1664

Foreign Trade

The view of foreign trade held by mercantilist statesmen and writers is still common. In an uncritical, almost naïve.

spirit the phrase "foreign trade," which obviously includes imports as well as exports, is at times used synonymously with export trade and the promotion of exports is regarded as peculiarly beneficial. The public is believed to be vitally interested in the volume of goods sent by a nation's industries to foreign countries. The expenditure of public money to promote export trade is justified on the ground that domestic prosperity is closely dependent upon the country's success in foreign commerce. A considerable portion of the time of foreign representatives of the United States, Great Britain, and other exporting nations is spent in promoting the business interests of their nationals.

This emphasis on the selling, outgoing phase of business calls for an explanation, although the reason for it will perhaps occur to readers of the earlier chapters of this volume. There is still a wide acceptance of the mercantilist theory that a "favorable balance of trade" (*i.e.*, an excess of commodity exports and of gold imports), is a national advantage. Furthermore, the economic organization of our western civilization is essentially expansive. It constantly seeks new markets in which to sell its products at a profit. When traders of one nation attempt to sell their products abroad, they come in competition with the traders of other nations, with the result that world economics become world politics involving individual governments.

Value of Export Trade

Although theoretically no special stimulus of export trade need be made to bring about the payment for imports by exports, the nationalistic organization of the world no doubt justifies giving it some special consideration. Through the ordinary course of exchange, the goods which we import and the services which we receive from foreign nations, must, in the long run, be paid for by goods and

services furnished by Americans. Articles such as coffee, rubber, and cocoa must be obtained entirely from foreign countries, and many others, such as wool, hides, sugar, tropical fruits and the like, are extensively imported. It has hitherto been found profitable also to purchase from foreign countries many manufactured articles. Without such importations the normal progress of our industries would be arrested, and the variety of articles available for domestic consumption would be materially reduced. Necessity, therefore, forces us to export commodities whether food-stuffs, raw materials, or manufactured articles or to furnish equivalent services to pay for the goods and services furnished us by foreign peoples.

Another reason why a steady export trade is desirable for the United States is its stabilizing effect upon American industry. If a manufacturer has an established foreign market for 10 or 15 per cent of his business, he may find, in times of depression at home, that it is his export trade that enables him to keep his factory running. Not only will he himself benefit thereby, but his employes and the community depending upon his business for a part of its prosperity. Foreign trade is particularly desirable in industries subject to seasonal demands. If an industry, let us say, such as the cement industry, has a market in Argentina, it will benefit by the circumstance that the building season opens there at about the time that it is closing in the United States. A seasonal industry with a market in the Argentine, therefore, will be able to maintain production more steadily throughout the year than one relying upon the domestic market alone, for the latter will inevitably suffer during a period of the year when production must be seriously curtailed.

It is argued that to increase the demand for an article by opening up an export market for it will necessarily advance its price in the domestic market, but the logical

conclusion of such an argument would be that all export trade should be forbidden. It would apply equally to any factor which might increase the demand for an article, whether coming from somewhere within our own border or from a foreign nation. In respect to all reproducible products, the exportation of goods, whether through export associations or otherwise, by increasing the demand, tends to increase the supply. Not only will increased production take care of increased demand, but for many classes of products the expanded volume may reduce the unit cost of production, with a potential reduction in the price of the article to the consumer.

Export Trade Not Necessarily Advantageous

Useful as export trade may be in certain cases, instances are not lacking in which it is not an advantage. The arguments in favor of promoting the export of foodstuffs, reproducible raw materials, and highly fabricated articles do not apply with equal force to minerals, forest products, and similar natural resources, and it is debatable whether the unrestricted export of American copper and oil will in the long run be advantageous to the public. Even from the point of view of the industry itself the increased production of copper and oil does not, as in the case of manufactured articles, result in lower unit costs; on the contrary the law of diminishing returns comes into play with the result of higher unit costs.

Then, too, the social effects of a too extensive export trade may be injurious. Assuming that manufactures constitute the expanding part of the export trade, it does not necessarily follow that a country profits by unlimited progress in industrialization, nor does the promotion of export trade unfailingly bring to a nation the most desirable kind of prosperity. While enriching one class in the population its effect upon other classes may be the reverse

of beneficial. When industries become mainly dependent on foreign markets, as has been the case with many in England, a sudden decrease in the purchasing power of the foreign consumer, especially when there is competition with other nations rising in the industrial scale, may result in a lowering of the social level of the producing classes as a whole.

An incidental consequence is the implied disrepute sometimes attached to the term "industrialism." R. H. Tawney observes: "When the Press clamors that the one thing needed to make this island (England) an Arcadia is productivity, and more productivity, and yet more productivity, that is Industrialism. It is the confusion of means with ends. Men will always confuse means with ends if they are without any clear conception that it is the ends not the means, which matter, if they allow their minds to slip from the fact that it is the social purpose of industry which gives it meaning and makes it worth while to carry it on at all."¹

Again, rivalries with other national groups and diplomatic complications which may follow in the wake of a growing foreign commerce, if not to be regarded as a reason for avoiding export trade, certainly furnish a reason for coöperative effort among governments to regulate international trade. The adjustment of commercial disputes and the regulation of competition and combination are no less necessary in international than in domestic trade. Indeed, the system of competition in commerce between citizens of different nations adds the element of national rivalry to the usual rivalries of trade. At the same time, the means for settling commercial disputes and for suppressing unfair competition in international trade are, where they exist at all, undeveloped as compared with

¹ Tawney, R. H., *The Acquisitive Society*, p. 46.

the commercial laws of advanced countries for dealing with such matters. Trade, carried beyond national boundaries, frequently bears a national stamp. It assumes characteristics which, far from being merely commercial, often hinder the adjustment of commercial disputes on their merits. The promotion and growth of foreign trade have become involved in the commercial policy of certain nations. They are prone to believe that national prestige is enhanced and that national ambitions are furthered by the extension of foreign markets and by the building up of an overseas commercial and financial organization. There are thus added to the ordinary and sufficiently difficult problem of regulating trade factors arising from the watchfulness of such nations for opportunities to make foreign trade serve their political ends.

Classification of Foreign Trade Problems

In spite of the complexity of international trade, however, progress has been made in establishing means for the adjustment of international trade disputes and the regulation of international commerce. Business men in leading commercial countries have not been slow to realize that in so far as commerce and finance are international they require a common international law and an adequate jurisdiction for their regulation. Perhaps in no other economic field has there been a more genuine effort to apply to an essentially international problem an international solution.

Three broad divisions of the subject suggest themselves:

(a) Trade disputes arising from breaches of private contracts and their adjustment through the enforcement of arbitration clauses in contracts. Parties directly involved in such disputes are buyers and sellers. The problems are not mainly those of com-

petition but of the interpretation and execution of the terms of private contracts.

(b) Unfair methods of competition in international trade and remedies, existing or proposed. In these cases the issue arises between competitors, the remedy being to establish rules whereby competition may be carried on fairly and without injustice to one or other of the parties concerned or to the public.

(c) Coöperation or combination for the promotion of overseas trade. In this case competition is voluntarily suppressed either for the purpose of making the foreign trade competition of a national group more effective against other national groups, or, less explicitly, for the purpose of injuring or exploiting the consumer.

Trade Disputes Arising from Breach of Contract

Contracts are constantly being entered into between citizens of different nations. In many cases, particularly in European countries, they contain clauses providing for the arbitration of any dispute which may arise concerning the interpretation or execution of the contract. By thus providing in the contract itself for the adjustment of differences, the parties avoid the expense and delay of court procedure and, so long as they submit to the awards of arbitrators, can readily and quickly adjust their differences. The efficacy of the system, however, depends on the enforceableness of the awards. Where a country permits the dispute to be reopened in the courts, even after the provisions for arbitration have been duly complied with, the object of the system is defeated.

A plan for the arbitration of commercial disputes between the Bolsa de Comercio of Buenos Aires and the United States Chamber of Commerce has been in effect for some years. Recognizing the value of this procedure,

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the Pan-American Financial Conference, which met in Washington in January, 1920, recommended the extension of the plan to all American countries and urged that legislation be adopted for incorporating into the judicial system the arbitral settlement of commercial disputes under the supervision of the courts. More recently the United States Chamber of Commerce has negotiated similar agreements with trade organizations in Brazil, Colombia, Ecuador, Panama, Paraguay, and Uruguay. Another plan is reported to be in operation between the Danish Industrial Council, the official representative of Denmark's industry, and the corresponding German body, the Deutscher Industrie und Handelstag. During 1922-1923 some eight hundred cases were brought to court, in only one hundred of which was formal decision necessary.²

The International Chamber of Commerce dealt with this subject at its meeting in London in 1921. It recommended:³

1. That the legal arbitration clause, or undertaking to submit to arbitration disputes arising as to the interpretation or execution of contracts between traders or manufacturers, be declared valid by all countries;

2. That all legislation, bringing into operation international agreements, recognise as arbitrators the persons designated by the parties concerned without distinction of nationality;

3. That in all countries an effort be made to secure legislation that will render executory the awards of foreign arbitrators without reference to the nationality of the parties, without further discussion upon the merits, limiting the enquiry merely to ascertaining whether or not the rules of procedure in force in the country where the award was made have been complied with, and whether or not such awards contain anything contrary to public order in the country in which the enforcement or *exequatur* is demanded:

² *Christian Science Monitor*, July 19, 1924.

³ International Chamber of Commerce, *Brochure*, No. 18, p. 16.

4. That the procedure in legal arbitration should be uniform in all countries;

5. And further, that the validity of the legal arbitration clause be recognised in legislation also in cases where arbitration is to be determined by means of "*amiables compositeurs*," since the diffusion of commercial arbitration is strictly connected with the possibility that arbitrators may be guided in their decision rather by principles of equity than by strict law.

In setting up a court of arbitration and adopting a code of rules,⁴ the International Chamber of Commerce has done important constructive work in furnishing the machinery for the settlement of trade disputes between citizens of different nations. These fall into three broad classes. The first deals with conciliation as distinct from arbitration. The second covers cases in which at least one of the parties is a national of a country not providing legal sanction for the execution of arbitration awards. The third establishes procedure where all the parties are nationals of countries providing such legal sanction. General provision is made for the selection of arbitrators, the summoning of parties, the submission of evidence, and the enforcement of the findings of the arbitrators. As the procedure is entirely independent of government, the International Chamber relies upon the force of public opinion in the business communities of the respective countries for ensuring compliance with the awards of the arbitrators.⁵

⁴International Chamber of Commerce, *Brochure No. 21, Rules of Conciliation and Arbitration*.

⁵Resolutions of the Congress of the International Chamber of Commerce held in Rome, March, 1923, were directed more particularly toward protection of industrial property through uniform domestic enforcement by individual nations. (International Chamber of Commerce, *Brochure No. 27*, pp. 5-7). Section 27 of the act of February 20, 1905; Treasury Decision No. 38035 of May 28, 1919, and Section 526 of the Tariff act of 1922 are examples of means for the protection of domestic industrial property through penalization of merchandise bearing registered American trademarks at the time of its importation into the United States.

Extension of Commercial Arbitration by Treaty

The effectiveness of commercial arbitration depends largely upon whether the laws of the respective countries of arbitration recognize agreements as enforceable and irrevocable. Efforts are being made to obtain uniformity in this respect. A conference of trade bodies meeting under the auspices of the United States' Department of Commerce on November 15, 1921, adopted a resolution urging that the Secretary of Commerce use his influence to aid in the passage of a Federal law which should make arbitration clauses, voluntarily entered into, in written contracts, valid, enforceable, and irrevocable. The resolution further urged that treaties be negotiated with foreign countries providing that arbitration agreements in commercial contracts be valid, enforceable, and irrevocable; that such treaties contain provision for reciprocal enforcement of such arbitration agreements by the courts of the countries parties to the treaties, and that such treaties provide that arbitration agreements in foreign trade bind the American merchant when they are equally binding upon the foreign merchant in his country.⁶

The economic committee of the League of Nations is another agency contributing to the extension of commercial arbitration. This committee, working through a special sub-committee of legal and commercial experts, made a detailed study of the arbitration clause and the means of its enforcement and recommended that "if two parties of different nationalities agree to refer to arbitration, disputes that may arise between them in a named country, an action brought by either party in any country other than that agreed upon as the place for arbitration ought to be stayed by the court of the country in which it is brought." The sub-committee further observed:

⁶ *United States' Commerce Reports*, February 13, 1922, p. 394.

"If these objects are to be secured, it is clear that one of the first things to be desired would be a change in the present law of France, and in any country where the law is the same, so that the clause *compromissoire* shall be recognized as valid and effective."

The Economic Committee thereupon drafted a protocol intended to bind each signatory nation to the following commitments: (1) To recognize the validity of commercial arbitration agreements, even if their execution is to take place in another country; (2) to facilitate all arbitration procedure as far as possible; (3) to undertake the enforcement of arbitral awards made within its own territory; and, (4) to require its own tribunals to stay any proceedings which by contract should be arbitrated, *i.e.*, when any of the parties involved shall desire it, and when the stipulated arbitration is possible. This draft protocol was referred back to the sub-committee, by whom it was generally approved except as regards the third point mentioned.

The sub-committee recommended the use of more specific terms and even went so far as to state: "The majority of the experts consider that it is possible and desirable to draw up an illustrative list of practices clearly included under the head of 'Unfair Competition.'"⁷

Unfair Methods of Competition in International Trade

The transition from some forms of breach of contract to the wider field of unfair practices and unfair competition may be imperceptible. Deception as to quality, for example, injures not only the buyer but also competitors selling a similar line of goods. A case in point is that of the false lapping or folding of piece goods and the false reeling of yarn sent into the Dutch East Indian market

⁷ *Official Journal of the League of Nations*, July, 1924, p. 953.

from Great Britain and Holland. "It is the practice of a number of firms," it is said, "to fold their goods in laps of less than a yard whereby the native purchaser is deceived and the unscrupulous trader gains an unfair advantage."⁸

Unfair methods of competition as usually defined, however, affect competitors directly. Almost all advanced industrial countries provide remedies, both private and public, against unfair competition occurring within their territorial jurisdiction. At common law in Anglo-Saxon countries many unfair practices have been declared unlawful and redress may be had through private litigation.⁹ In many countries unfair competition is now an offense against the state. In the United States, for example, it may violate the Sherman anti-trust act.¹⁰ The Federal Trade Commission has condemned a large number of unfair practices.¹¹

The Sherman anti-trust act was enacted in 1890. Under numerous court decisions this law has been construed to prohibit unreasonable business combinations and a wide variety of unfair practices whereby one competitor seeks to put another out of business. Under the Sherman law, decrees of the courts have frequently specified and condemned unfair acts such as price cutting, full-line forcing, fighting brands, espionage, commercial bribery, bogus independents, and boycotting.¹² They have thus dealt

⁸ "Report to the Board of Trade of Merchandise Marks' Committee" (1920), *British Blue Book*, Cmd. 760, p. xiii.

⁹ United States Department of Commerce *Trust Laws and Unfair Competition*, p. 334.

¹⁰ Shale, Roger, *Decrees and Judgments in Federal Anti-trust Cases*, (1918) and Sec. 5 of the Federal Trade Commission Act which prohibits unfair methods of competition in interstate commerce.

¹¹ *Annual Report of Federal Trade Commission for Fiscal Year ending June 30, 1920*, pp. 56, 57.

¹² United States Department of Commerce *Trust Laws and Unfair Competition*, p. 462, *et seq.*

with unfair competition as a part of a general tendency to monopolize a given line of trade. No act has been condemned by the court until it has begun to produce results deemed to be injurious to the public, that is, until it has either seriously injured or eliminated competitors in a given line and tended to create a monopoly.

The development of laws for the regulation of trade in the United States led to the growth of a sentiment favoring the prevention of unfair methods of competition through Federal control. The advantages arising from separate treatment of abuses, in their early stages, in advance of possible monopolistic control were considerations which influenced the establishment of the Federal Trade Commission and its endowment with power to restrain the use of unfair methods of competition in interstate trade.

Protection of Industrial Property

Unfair methods of competition in international trade are analogous to those in domestic trade. In fact, the line of demarcation between the two is almost imperceptible, for the same methods are pursued by traders outside as inside a country. Of the various forms of unfair competition the one receiving the most consideration in international discussion has been the class affecting private rights in patents, copyrights, and trade marks.¹³ The protection of patents and copyrights is dependent upon national legislation and treaty rights. In the absence of treaty obligations, the patents and copyrights of one country are not entitled to protection in another. It is obvious that where no reciprocal arrangement exists for dealing with matters of this kind serious commercial difficulties may arise. It has, therefore, been generally recognized as an unfair

¹³ Cf. "International Patent Legislation," *Journal of Political Economy*, February, 1923, p. 90.

practice requiring correction for the citizens of one country to copy the patents or to reproduce the literary property of citizens of another country, which grants patent and copyright protection for a specified time. The success of an enterprise may depend upon the protection of patent rights and copyright privileges in foreign countries, and in the absence of such protection legitimate business may be seriously interfered with by persons who seek profit by preying on the property rights of more highly industrialized nations.

Simulation of Trade Marks and Names

Closely associated with this problem of protecting patents and copyrights is that raised by the simulation of trade marks and trade names in order to pass off products as those of a competitor. A business man may build up a trade reputation on a trade mark and a trade name or even on the particular form or package in which his product is sold. He may spend large sums of money in advertising his products under these marks, names, or forms, which the public has come to know for their quality and to recognize by these designations. This is particularly important in those parts of the world where the people are largely illiterate and obtain their impression of their purchases from the marks which they bear or from the packages in which they are put up. Trade pirates have been guilty of undermining the good will of many firms whose products they simulate by imitating the trade marks or even the designs of the package in which the competitor's products are sold. Among cases of unfair competition falling within this class are the imitation by the Japanese of American glassware in sizes, patterns, decorations, cuttings, etchings and bandings made by a particular concern and the selling of such simulated products in the markets

of the United States and Canada;¹⁴ the simulation in the Chinese market of the "Eagle" brand of canned milk manufactured by the Borden Company; the application of the word "Sheffield" in the United States and in Germany to goods not originating in Sheffield, England;¹⁵ and the sale of Japanese matches in the United States in boxes simulating the well-known Swedish brands.

False Indication of Origin

Among the problems arising in this general field of unfair competition are those which relate to the false indication of origin. Here the difficulty lies chiefly in determining what terms are "regional" and what are "generic." Certain terms, originally used to indicate the place where a product was grown or made, have come to be accepted as conventional or generic appellations; "Brussels carpets" and "Mocha coffee" are cases in point. There are designations, however, which clearly have a regional significance. Examples are found in the following declaration made by the British Government at the Brussels Conference of 1897, interpreting Article 4 of the Madrid Arrangement:

Great Britain by existing law gives complete effect to the Arrangement of Madrid in its present form, and the English Municipal law derogates in no respect from that arrangement.

Under the Customs Regulations in England, any goods may be admitted to entry which bear, in clear and legible characters, an indication of origin which is not false; for example: "Cape Port," "Swiss Champagne," for it is evident that in such cases the indication of origin consists in the precise mention of the locality from which the goods come.

¹⁴ U. S. Tariff Commission: *The Glass Industry, Tariff Information Series No. 5*, pp. 106, 107.

¹⁵ "Report to the Board of Trade of the Merchandise Marks Committee" (1920), *British Blue Book*, Cmd. 760, p. xii.

French wine growers have protested for many years against the use of the terms cognac and champagne to describe foreign liquors. Under the Treaty of Versailles, Germany, in addition to undertaking to protect the Allied and Associated Powers "from all forms of unfair competition in commercial transactions," undertakes, on condition that reciprocity is accorded, "to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied or Associated State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wines or spirits produced in the State to which the region belongs." Commenting on this Dr. Notz says:¹⁶

The provisions of the foregoing Article are supposed to settle the longstanding feud between French and German producers of cognac and wines. On the one hand the designation "cognac" and the regional appellation for French wines are to be protected in the future, while on the other hand similar protection is to be accorded to the Rhine and Mosel wines against misuse and misappropriation of designations of provenience.

Dumping

The practice of dumping or price discrimination between national markets¹⁷ is usually considered from the standpoint of national protection and in determining what measures a nation may adopt to shield its industries from unfair competition. Viewed thus, anti-dumping statutes are merely supplementary to protective tariffs, and may even be justified under a régime of free trade.¹⁸ Obviously,

¹⁶ Notz, William, "Unfair Competition," *Yale Law Journal*, February, 1921, p. 393.

¹⁷ Viner, Jacob, *Dumping: A Problem in International Trade*.

¹⁸ Dr. Viner in the volume referred to clearly accepts free trade as the most desirable commercial policy in international relations. He does not, however, consider anti-dumping legislation inconsistent with the doctrine of free trade. " . . . if the free-trade doctrine," he

not all price discriminations between national markets are to be classed as unfair methods of competition but under certain conditions they may be, and when they do fall into that category national legislation alone is incapable of dealing with them effectively. They should be considered as a part of the larger problem of devising adequate means for coöperation among states in the prevention of all unfair methods of competition in international trade. Unfair dumping may be carried on not only in markets of nations interested in stopping it by national legislation but by the exporters of one country against the export trade of another in a third country which may be willing to permit cut throat competition. If anti-dumping legislation is to be justified on the ground that it tends to maintain fairness in a nation's domestic trade, it can be equally justified as a means of maintaining fairness in commercial intercourse in those areas of the world to which the regulating influence of sound commercial law does not now extend.

The nature of dumping may be made clearer by a classification from the standpoint of motive.¹⁹ In the first place, the foreign market may be a place where the manufacturer disposes of temporary surpluses of products which he has been unable to sell in the domestic market. Under our present system of industry, in which the manufacturer produces for a future demand,²⁰ it is difficult, in fact impossible, for him to judge definitely the amount the market will absorb. Almost inevitably, therefore, if he

says (p. 147), "be regarded as the positive doctrine that commerce and industry should be kept in their natural channels and not merely the negative doctrine that nothing be done by legislatures to force them out of their natural channels, it would not merely be invalid to cite the doctrine as opposed to restrictions on dumping but it would be valid to argue that it calls for such restrictions."

¹⁹ Culbertson, W. S., *Commercial Policy in War Time and After*, Chap. viii.

²⁰ More common in the United States than in Great Britain or France.

is aggressive, he finds from time to time surplus products in hand for which his normal and permanent market offers no outlet. Thus he finds it convenient to dump. His position is similar to that of the grocer who finds on hand Saturday night a quantity of perishable vegetables and fruits which he knows will not keep until Monday, and which he is consequently willing to sell for any price that the market will bring. In other words, he offers them at a bargain price, realizing that anything that he may get for them will add to the gross income of the day. Similar bargain offers frequently made by manufacturers in international trade probably represent the most familiar form of dumping.

In the second place, dumping may be carried on systematically by a manufacturer having a surplus capacity of plant, that is, a larger output than he can normally dispose of at profitable prices in the domestic market. This is a tendency in the growth of industry under the capitalistic system. In addition to their primary markets, manufacturers find it convenient to have secondary markets in which to dispose of their excess though perhaps permanent production. Except in unusual circumstances the domestic market can not absorb the entire output, and the possession of a permanent export trade enables manufacturers to run their factories at capacity and all the year round.

Goods are at times dumped abroad in order to maintain a skilled organization. When times are dull in the domestic market, manufacturers often prefer selling at a lower price abroad rather than permit the disintegration of their organizations and the scattering of their skilled workmen.

Dumping may be justified on the ground that by making possible a larger output it reduces overhead expenses and fixed charges and thereby cuts down the unit cost of production. It is argued that even though a part of this larger

output may be sold for less abroad than in the domestic market, this lowered unit cost applying to the entire production results in a lowered price to the domestic consumer. However that may be, from the standpoint of the producer himself it may be profitable to sell a part of his production abroad at lower prices than he obtained for the bulk of his production in the domestic market.

In the third place, the selling of goods abroad at relatively lower prices may be merely for the purpose of meeting competition. If competition abroad is on a lower price level than in the domestic market, it may serve the purpose of an American manufacturer, as a matter of business tactics to sell his goods for less than the price prevailing at home. For instance, export prices may be fixed below the domestic price level for the purpose of counteracting high foreign tariffs, thereby making it possible to compete with the foreign producer in his own market. In such cases "the foreigner pays the tariff." Prices are also at times made lower in foreign than in domestic trade for the purpose of introducing products unfamiliar in these markets.

Finally, dumping may take the form of unfair price cutting, with the object of injuring or destroying a competitor, either in the home market of that competitor or in a third country.

Among the more notorious methods of dumping are those adopted prior to 1902 by the sugar industry in various foreign countries, leading to the negotiation of the Brussels Sugar Convention. The German Steel Syndicate, prior to 1914, was also charged with engaging from time to time in the practice of dumping. In fact, producers in every industrial nation have adopted the system as occasion arose. Dr. Viner shows²¹ that export dumping

²¹ Viner, Jacob, *op. cit.*, p. 80.

"on a continued and systematic scale has been a common practice of American manufacturers since at least the late eighties of the last century." It is, however, not so general as propaganda literature has frequently represented it to be.²²

Other Unfair Trade Practices

In addition to those cited above, practices designed to injure the trade of a competitor include false advertising, the misrepresentation of the credit and standing of a competitor, commercial espionage, and the exposure of trade secrets. Banks controlled by one nationality have been charged with having disclosed information concerning orders and specifications to those of another nation. Exporters of one nation sometimes promote their business with other nations by means of full-line forcing, fighting brands, boycotts, and commercial bribery. The last-named practice is being effectively dealt with in Great Britain by "The Bribery and Secret Commissions Prevention League, Inc."²³ In the United States there is now pending before Congress a bill to penalize commercial bribery and other corrupt trade practices.²⁴

Unfair Competition Encouraged by Government

Unfair competition takes on a more serious aspect when encouraged by the state. Perhaps the most familiar example of this form of unfair competition is the bounty, granted either directly or indirectly on the production or the exportation of a product. The bounties granted to

²² U. S. Tariff Commission: *Dumping and Unfair Competition* (1919).

²³ Leonard, R. M., *Unfair Competition with Special Reference to Bribery*, London, 1921.

²⁴ Cf. also trade practice submittals of the Federal Trade Commission and other data referred to in that Commission's annual reports. See also Appendix IV, *Principles of Business Conduct*.

the sugar industry in certain European countries prior to 1902, to which reference has already been made in connection with dumping, afford a striking example. Bounties may also be granted by private associations, as in the case of the German Steel Syndicate from 1905 to 1914.²⁵ They may be concealed in such forms as the remission of taxes paid on the exported portion of a product or an increase of a drawback allowance beyond the amount necessary to reimburse the producer for a duty paid on raw material or on the semi-finished products entering into his final production.

Measures to Prevent Unfair Competition in International Trade

A review of these unfair methods of competition in international trade, with suggestions as to possible remedies within domestic jurisdictions, raises the query, what methods, if any, may be adopted for regulating competition among nations and for insuring fairer trade practices in international commerce? Among general measures thus far adopted may be cited:²⁶

1. The United States has extended its laws against unfair methods of competition so as to include acts committed by its citizens outside the territorial jurisdiction of the United States.

2. Nations have guaranteed to others both by treaty and by legislation the same protection from unfair methods of competition within their jurisdiction as they accord to their own citizens.

²⁵ Federal Trade Commission: *Coöperation in American Export Trade*, Vol. I, p. 214.

²⁶ These remedies do not include anti-dumping legislation, countervailing duties, and general statutes against specific unfair methods of competition in the importation of goods adopted by nations to protect their home markets from unfair competition.

3. Nations have guaranteed to provide within their own jurisdiction adequate protection against unfair methods of competition.

4. Within limited fields, international coöperation has been accepted for the purpose of contributing to the fairness of international competition.

Unfair Acts beyond Our Territorial Jurisdiction

It is a general rule of Anglo-Saxon law that courts do not have jurisdiction over acts committed outside of, and without legal effect in, their territorial jurisdiction. The Supreme Court of the United States recognized this principle in holding that damages may not be recovered for injury resulting from acts of the defendant committed in foreign territory when the act was not in violation of local law.²⁷ To meet the situation created by this decision and to afford American citizens engaged in export trade the same protection accorded them in domestic trade, Congress provided that the prohibition against unfair methods of competition contained in the Federal Trade Commission act "shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."²⁸

Guaranties of National Treatment

Bilateral treaties have from time to time been entered into by nations granting reciprocal national treatment with respect to industrial property.²⁹ Some nations

²⁷ *American Banana Company v. United Fruit Company*, 213 U. S. 347.

²⁸ Section IV, An Act to Promote Export Trade and for Other Purposes, approved April 10, 1918. See Annual reports of Federal Trade Commission for administration of the law.

²⁹ U. S. Tariff Commission: *Handbook of Commercial Treaties, 1922*.

have extended to aliens, by legislation, the same rights that are enjoyed by nationals.³⁰ By far the most important multilateral treaty of this nature is the Convention for the Protection of Industrial Property entered into at Paris in 1883. Under this convention, as revised at Washington in 1911, the nations signatory thereto agree that "the subjects or citizens of each of the contracting countries shall enjoy, in all the other countries of the Union, with regard to patents of invention, models of utility, industrial designs or models, trade marks, trade names, statements of place of origin, suppression of unfair competition, the advantages which the respective laws now grant or may hereafter grant to the citizens of that country. Consequently, they shall have the same protection as the latter and the same legal remedies against any infringements of their rights, provided they comply with the formalities and requirements imposed by the national laws of each state upon its own citizens. Any obligation of domicile or of establishment in the country where the protection is claimed shall not be imposed on those who enjoy the benefits of the Union."³¹

Twenty-eight states are now parties to this convention, including the United States.

Similarly, within a more restricted field, national treatment with reference to industrial property is guaranteed in the three conventions signed at Buenos Aires in 1910 by the republics of the Americas. The first of these relates to literary and artistic works, the second to trade marks and commercial names, and the third to patents of invention, designs, and industrial models.³² These three

³⁰ See Chap. ii, *supra*.

³¹ *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1910-1913*, Vol. 3, p. 2956. For recognition of the Convention in the courts see *Yale Law Review*, February, 1921, p. 393.

³² *Ibid.*, pp. 349-366.

conventions have been ratified by the United States and by certain of the other American republics.

Treaty Pledge of Protection against Unfair Competition

In the revision of the convention establishing the Union for the Protection of Industrial Property effected at Washington in 1911, it was recognized that something more was needed than a guarantee of national treatment. Only in those countries whose citizens enjoy protection of their industrial property could citizens of other nations hope to be protected. Nations backward in their industrial development might not have the same motives for enacting laws to that end as would the more highly industrialized states. It followed, therefore, that the laws of some countries afforded only inadequate immunity from the infringement of patents, copyrights, and trade marks. In revising the convention, therefore, the situation was met by the addition of a new article providing that "All the contracting countries agree to assure to the members of the Union an effective protection against unfair competition." The French text of this convention renders "unfair competition" "*concurrence déloyale*," a more restricted term than the corresponding Anglo-American phrase.

Similar to this provision is Article 274 of the Treaty of Versailles, requiring that Germany "adopt all necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied and Associated Powers from all forms of unfair competition in commercial transactions." This article differs from the provision in the industrial property convention in that it is unilateral.

Into this general class of remedies falls the Madrid convention entered into in 1891 and revised at Washington in 1911 and to which the United States is not a party. By the terms of this agreement the importation of goods

whose origin is falsely indicated is prohibited, or if such goods are entered provision is made for their seizure.

Beginnings of International Coöperation

Nations have been slow to establish any really effective international machinery for the protection of commerce against unfair methods of competition. A beginning has been made in the establishment of a bureau at Berne for the dissemination of information. In a separate convention, to which the United States is not a party, protection is provided for trade marks already admitted to international registry. Also the Pan-American Trade Mark Convention, signed at Buenos Aires in 1910, provides for the registration of trade marks at bureaus established at Havana and Río de Janeiro. In neither of these cases, however, has the international organization power to provide protection, which must be obtained through the laws of the countries party to the convention.

An important example of international coöperation for the suppression of unfair competition is found in the Brussels Sugar Convention signed in 1902. This convention grew out of an intolerable economic situation created by the payment of sugar bounties by European countries and the dumping of sugar in foreign markets. After prohibiting dumping and providing penalties against it, the convention established an international commission to pass on cases that might subsequently arise. The decisions of the commission were binding upon the contracting states. This convention was terminated in 1918.

The Covenant of the League of Nations (Article 23e) provides for "the equitable treatment of commerce"³³ and it is made the specific duty of the League of Nations to enforce this provision. It is conceivable that around this

³³ See page 295 for a discussion of this phrase.

provision of the Covenant there may develop a substantial body of law relating to the suppression of unfair methods of competition in international trade.

Developing International Commercial Law

The elaboration of rules and procedure to regulate competition in international trade is not the work of a day. International commercial law must necessarily be a gradual evolution. Some beginnings have been made, and still more can be done by national legislation and by the negotiation of bilateral treaties. But the great objective should be the initiation of an international commercial code, adopted by the family of nations, to regulate the competition of their nationals in international commerce.

It should be the first purpose of such a code to define precisely what constitutes unfair methods of competition. The World Court, if given time, would develop a body of law through its decisions in individual cases, but in the absence of agreement among nations as to what does or does not constitute unfair competition it may be necessary, in formulating an international code, to begin with accepted and obvious cases. The controversy over what terms are regional and what are generic furnishes an excellent example of the need of a definite understanding. Undoubtedly some commodities, such as wines and cheeses, may gain their peculiar flavor from the conditions of the locality in which they are produced. In such circumstances the regional name by which they are designated should be protected, and measures should be taken to prevent its application to similar goods produced elsewhere. On the other hand, political pressure may be exerted within a country to have a term declared regional for no other reason than the desire of producers to monopolize its use. Where such designs succeed other countries cannot be expected to be bound by the decision.

Equally important to the development of the substantive law of unfair competition is the establishment of procedure for the settlement of disputes. The procedure thus far developed for the suppression of international unfair competition is admittedly cumbersome and unsatisfactory, the right to bring a private suit in foreign countries for the purpose of protecting a patent, copyright, or trade mark being frequently of little value.

The regulation of international commerce must necessarily be a gradual development. A commission might be given semi-judicial or administrative powers to deal with the subject of unfair competition, with the probability that publicity would, in most cases, be sufficient to enforce its decisions. In the arbitration of commercial disputes between citizens of different nations, the International Chamber of Commerce, as has been pointed out, relies chiefly on opinion in the affected business community for the enforcement of its awards. The mandate Commission of the League of Nations has found publicity a powerful force in getting its suggestions carried out. If, however, it should seem desirable to go farther, the Commission's decisions might be enforced through some national body in the country of which the offending party is a resident; for example, a decision against an American corporation guilty of unfair competition in international trade might be enforced through the American courts as are the decisions of the Federal Trade Commission.

Appeals to the World Court should be provided for in matters of law not only in unfair-competition provisions in bilateral treaties but also in decisions by a commission established under a multilateral treaty.

International Combination

A third general division of the subject under discussion relates to coöperation and combination of business interests

in international trade. In this connection one phase of the Sherman anti-trust act is of interest. This act condemns not only attempts to put trade rivals out of business but also unreasonable voluntary restraints of trade, that is, it prohibits competitors themselves from getting together by means of trust agreements, holding companies, or any combination for the purpose of unreasonably and voluntarily suppressing all competition with each other. The courts of the United States have as yet not decided the direct issue as to whether or not in the entire absence of unfair methods of competition mere size of corporation is in violation of the law. The evidence in most of the cases which have been before the courts has shown that monopoly or near-monopoly was achieved through unfair practices and the court has usually based its orders for dissolution upon this fact. There has been, however, a general belief that the Sherman anti-trust law affords a protection to the public against large combinations of wealth which, because of the power thus obtained, may act injuriously against the public.

Large corporations of advanced industrial countries operate also in foreign markets. A United States Federal Court has commended the activities of the United States Steel Corporation in promoting American export trade. The problems of large combinations of capital in international commerce are analogous to problems in the domestic market, but are complicated by a wider variety of conditions and by the national interests involved in the operation of corporations of different countries.

Desire for Monopoly

Monopolies of trade have been sought from the earliest time. The Italian cities endeavored to monopolize European trade with the East and for many years were to a large extent successful. One of the impulses leading to

the search for new routes to the Indies around the Cape of Good Hope and across the Atlantic was the desire to break this trade monopoly. Spain and Portugal, between whom the world outside of Europe was divided at the beginning of the age of discovery, applied the same principles of trade monopoly to the areas under their control. Portugal made trade with her eastern possessions a state monopoly and Spain forced ships sailing to America to follow specific schedules and touch only at permitted ports.

For many decades the leading industrial countries of Europe have emphasized the importance of a vigorous export trade and have bent their energies toward obtaining it.³⁴ Their laws have in almost every case been more liberal in permitting coöperation and combination than the laws of the United States and of countries such as Canada, Australia, and New Zealand. Referring to Germany's pre-war organization for foreign trade, the Federal Trade Commission said:³⁵

Associations, cartels, special export selling agencies, special export cartels among allied or complementary manufacturers, active aid by the German financial organizations and by the German merchant marine, together with the support of the Imperial Government—this was the system which had pushed German export trade into all the markets of the world. Equally effective methods were employed in the business of buying cheaply the raw materials that Germany was compelled to import, and in some cases very comprehensive buying combinations with world-wide international branches and subsidiaries were developed to purchase these materials.

Such organized effort made it possible for the Germans to publish a daily paper in Constantinople, printed in both French and German, for the promotion of an interest in all things German and for the improvement of German trade in the Levant. Similarly it permitted the education of promising young Chinese as engineers at schools and universities in Germany at the ex-

³⁴ Federal Trade Commission: *Coöperation in American Export Trade*, 1916.

³⁵ *Ibid.*, pp. 111, 112.

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pense of German business organizations, as well as the establishment of an engineering school in Shanghai with German engineering equipment and German instructors for the training of young Chinese in China in German engineering standards, methods, equipment, etc., all for the fostering of German trade in the Orient. It colonized German business agents all over the world and used German residents abroad to aid the development of foreign trade.

Great Britain's strength in foreign trade may be traced to several sources. She was first in the field and established many valuable and important connections. Her merchant marine has been at all times one of the important media of developing foreign markets, and she has in the Marine Department of the Board of Trade a government body which deals directly with shipping interests. Excellent connections have been established with Canada and the United States, South America, the Orient, Australasia, Africa, and Europe, and thousands of British "tramps" and freighters maintain traffic in and out of every harbor in the world. The extensive organization of Lloyds has made it a leading factor in the commercial life of England and the dominant element in international marine insurance. Banking facilities, credit, foreign investments, cable control—these too have contributed to the strength of British world traders.

Coöperation for Export in United States

In passing the Sherman law in 1890 Congress was concerned almost wholly with large business combinations threatening to control the home market. The law was designed to protect, first, the small business man, and second, the American consumer. It aimed, first, to protect American citizens as producers and to keep the channels of trade free and open so that competition might function properly, and, second, to protect American citizens as consumers and to insure them, through the

operation of competition, products of good quality at fair, competitive prices.

It was probably not intended to apply the law to associations engaged solely in export trade.³⁶ While of salutary effect in domestic trade, it was regarded as a hindrance to the expansion of our foreign trade. Competition among American business men in marketing their products abroad, it was argued, injured no interest except American, and only played into the hands of foreign business interests. In foreign markets our business men, it was said, were set upon not by individual competitors but by combinations of competitors pooling all their industrial commercial, and financial strength in a common cause.

The Sherman anti-trust law, or at least the business man's conception of it, hindered constructive work in the organization of export associations among American competitors. Forbidden to combine for domestic trade, they were afraid to combine for foreign business.

As an aid to American exporting interests Congress passed in 1918 the Export Association Act providing that nothing contained in the Sherman anti-trust act should be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade.³⁷ Furthermore in 1922 Congress authorized the creation of corporations for the purpose of engaging in business within China.³⁸

Examples of International Combinations

Examples of combinations for selling products in the international market are the Chilean Nitrate Association, the Mexican Sisal Combination, the Quinine Combination,

³⁶ Federal Trade Commission, *op. cit.*

³⁷ Notz-Harvey: *American Foreign Trade*.

³⁸ Public, "An Act to Authorize Creation of Corporations for the Purpose of Engaging in Business within China"—No. 312—67th Congress.

and the various combinations for the purpose of selling chemicals and dyes. The British Dyestuffs Corporation (Ltd.) formed in July, 1919, is a consolidation of British dye interests with government participation. A report of the British Board of Trade states, "The greater financial and commercial strength of the amalgamation enables it to compete to better advantage in the home market and in the world markets with the greater and powerful dye-making concerns of Germany, Switzerland, and America."³⁹ Since the war a number of other large export and import combinations have been formed in various parts of the world.⁴⁰

Large combinations of capital have been known to divide foreign markets, as was alleged to be true of the two large German electrical concerns operating in foreign markets before the war.⁴¹ In the case of the *American Tobacco Company v. the United States* (221 U. S. 106) the court condemned a covenant entered into by the Imperial Tobacco Company, the American Tobacco Company, and the American Cigar Company under whose terms the two American companies agreed to refrain from business in Great Britain and Ireland, while all three abstained from business of a specified character in countries other than Great Britain, Ireland, and the United States.⁴² Buyers as well as producers have in the past organized for the purpose of advancing their interests. The control of the gutta percha supply by British nationals affords a striking example.⁴³

³⁹ *Annual Report of the Federal Trade Commission for the Fiscal Year ended June 30, 1921*, p. 63.

⁴⁰ *Ibid.*, p. 63.

⁴¹ Federal Trade Commission: *Coöperation in American Export Trade*, Vol. I, pp. 279, 280.

⁴² Department of Commerce: *Trust Laws and Unfair Competition*, p. 83.

⁴³ Culbertson, W. S., *Raw Materials and Foodstuffs in the Commercial Policies of Nations*, p. 89.

The American Export Association law, already referred to, has been criticised in foreign countries on the ground that it permits our producers to engage in those countries, in a type of trade prohibited in our domestic markets. In most cases, however, this law has contributed to make effective in foreign markets American competition with those who had previously held the field. It can be condemned only in the sense that all state policies directly promoting foreign trade are to be condemned. When governments lend their influence to extend the trade of their citizens abroad, they give international competition their national stamp. The discussion of these considerations, therefore, revolves about a larger problem than appertains merely to this or that measure; it involves the consideration of a system lineally descended from the harsh mercantilist policies of earlier centuries and which has the merits and the weaknesses of the old state monopoly of Portugal or of the Hansa League.

Economic Disarmament

The accepted and often lauded alliance between governments and business in international commerce must be faced as an elementary fact in any program seeking to minimize wars among the nations. Monopolies, attempts at monopolies, even fears of monopolies, have for centuries led and to-day lead to misunderstandings and possible ill will between peoples. A program of military disarmament will provide no security unless supplemented by international coöperation capable of restraining individual governments from commercial aggression and what is known as "peaceful penetration."

Many, who urge the limitation of armament fail to realize the degree of positive international coöperation thereby implied, or that it is but the first step to a constructive program of international coöperation. Merely

to limit arms may save a few dollars but it will not provide security, so long as arms are inseparable from nationalistic policies. Armies and navies are an essential part of our disorganized world and their cost is the price we pay for the world's failure to agree upon reasonable rules of national conduct and upon reasonable but effective means of enforcing them.

Effective limitation of military arms, or disarmament, must be preceded by economic disarmament, which means the abandonment by nations of all aggressive economic measures, such as monopolies of essential raw materials and economic penetration of foreign countries by loans or investments. But these measures will not be abandoned until the nations have adopted means of coöperation which will obviate rivalries and provide economic security.

The movement to outlaw war is valuable in its tendency to develop a sentiment against armed conflict of such strength as to increase the difficulties of a resort to arms. But its advocacy has led many to believe that war is a mere exotic phase of our civilization to be discarded as a worn out garment. Wars will continue until we uproot their causes and provide peaceful means of settling disputes now decided by armed conflict. Moral disarmament can result only from a feeling of security, arising from the settlement of economic and political disputes or from the provision of satisfactory international arrangements for such settlement.

Economic disarmament entails limitations upon the activity of the governments of the great exporting nations in promoting export trade. German trade combinations have been condemned by other national business interests while themselves seeking to develop similar competing combinations. If foreign trade is to continue essentially nationalistic, each country is entitled to use such power as it may possess to advance its interests and the interests

of its nationals. But such a policy inevitably means national rivalry, ill will, and hostility.

It would seem, therefore, that a first step in economic disarmament would be an international agreement⁴⁴ to refrain from state encouragement and promotion of trade. Freed from aggressive promotion at the hands of national governments, trade would return to normal competitive channels. Governmental interference with international trade should be restricted to stopping unfair methods of competition and to restraining the monopolistic and exploiting tendencies of great international combinations. If international commercial law were once embodied in a multilateral treaty, national governments could contribute greatly to its enforcement. The operation of such law would call for a degree of regulation of competition and combination best effected through an international trade commission, and a consecutive interpretation of the law by the World Court.

⁴⁴Until all nations are willing to substitute trade regulations for trade promotion in international relations, it will be not only necessary, but proper, for a nation to aid its nationals in their economic pursuits abroad.

CHAPTER XII

COMMERCIAL POLICIES AFFECTING SHIPPING

" . . . he hath an argosy bound to Tripolis, another to the Indies; I understand, moreover, upon the Rialto, he hath a third at Mexico, a fourth for England, and other ventures he hath squandered abroad. But ships are but boards, sailors but men: there be land-rats and water-rats, water-thieves and land-thieves, I mean pirates; and then there is the peril of waters, winds, and rocks."

Merchant of Venice.

"As concerning ships, it is that which everyone knoweth and can say, they are our weapons, they are our ornaments, they are our strength, they are our profit; the subject by them is made rich, the Kingdom through them, strong; the Prince in them is mighty, in a word, by 'hem in a manner, we live, the Kingdom is, the King reigneth." (From an English Pamphlet, about 1681.)

Encouragement of Merchant Marine

A nation may encourage a merchant marine upon the same principle that it encourages development of agriculture and manufacturing.¹ Overseas' commerce is a line of endeavor in which the energy, capital, and labor of a people may find employment and from which its citizens may profit. Where there is competition with other nations, state aid may be necessary because the merchant marine is undeveloped or because it operates under disadvantages. Approaching the subject, however, from the

¹ Since, however, shipping is only a half-domestic industry the same principles of protection do not apply to it as to industries within a country. See p. 453, *infra*. See Appendix VIII for a discussion of postal communications, aircraft, cables, and radio.

standpoint of national policy, other factors influence the decision as to what measures a nation should adopt. In the first place, it may be urged that a merchant marine is in the long run essential to the economic prosperity of a highly industrialized nation. As long as the chief exports of the United States were foodstuffs and raw materials, the ships of foreign nations came to our shores to carry them away. Such products sold themselves in the international markets. After 1896 and particularly since the World War, however, when we developed an important export trade in manufactured articles, the need for ships under American register became increasingly evident. A number of our large corporations, such as the Standard Oil Company, the Steel Products Company, the United Fruit Company, and the Guggenheim interests purchased their own ships in order to establish security in their overseas' trade. Foreign merchant marines were interested in carrying our trade as long as it was profitable to them to do so, but, closely associated as they were with the commercial and national aspirations of the nation whose flag they flew, they were not concerned with furnishing service to American exporting interests. Ocean shipping is in fact (whatever it should be in theory) essentially a national enterprise, and any nation aspiring to an important place in world commerce needs a merchant marine.

Merchant Marine and the Navy

In the second place, merchant ships bear a vital relation to naval preparedness. A navy, particularly in time of war, is ineffective unless supported by a large fleet of auxiliary vessels. The importance of merchant ships in making a navy effective increases with the distance of the naval operations from the national base. The merchant marine is also an effective training school for naval personnel and may be made the basis for developing a naval

reserve. Because of the close relationship between merchant ships and the navy any reduction in naval armament should be accompanied by increased efficiency in merchant ships. Total naval disarmament would place the control of the seas in the hands of the nation having the largest and fastest merchant marine and under that principle reduction of naval armament would have the same relative effect.

Discriminating² Duties Proposed

In studying commercial policy as affecting shipping a brief examination of measures adopted in the early history of the United States is desirable.³ These are by no means dry-as-dust history, for in recent years it has been and it is now being seriously urged that we return to the policy of discrimination in customs and tonnage duties which characterized our early navigation laws. This objectionable policy was embodied in several sections of the Merchant Marine Act of 1920. The advocacy of shipping discriminations came chiefly from the shipbuilding interests, whose representatives at the time the Merchant Marine Act was under consideration, urged a re-adoption of the old navigation laws of England and of our early history. A committee of shipbuilders commended⁴ "to the consideration of the public the navigation act of Cromwell, upon which the marine ascendancy of Great Britain was securely based, and which, adapted to our early needs, instantly proved itself worthy by the amazing progress of

²In shipping circles the term "discriminating" has long been applied to duties favoring domestic shipping as compared with all foreign vessels.

³See *Report of the United States' Shipping Board* on the "History of Shipping Discriminations and on Various Forms of Government Aid to Shipping," 1922.

⁴Report of Committee of American Shipbuilders; *For an American Merchant Marine*, New York City, 1920.

our shipping during the first decades of our National existence." It seems to have been forgotten that the British navigation laws succeeded only because the British navy stood behind them and because the British people, whose welfare depended upon their ships, were willing to fight war after war in their defense.⁵ But these laws were finally abandoned because they provoked retaliation. It was discovered that shipping is essentially an international business and that its prosperity depends upon carrying cargoes both ways. Other nations were unwilling to submit to discriminating tonnage and customs dues or to accept exclusion from colonial trade without imposing similar exactions on British ships.

Origin of Our Early Shipping Policy

At the end of the eighteenth century the methods of international trade were exceedingly harsh. The question was not primarily discrimination but rather the right to trade at all. The commercial policies of European states were dominated by ideas of monopoly and exclusion. English navigation laws, which were no exception to this rule, virtually forced our early adoption of discriminating duties in retaliation. They hindered the free development of our colonial shipping, especially after the signing of the Declaration of Independence, when they were applied against American shipping in their full vigor.

From the very beginning the drift of opinion in America was toward liberality and reciprocity in shipping policy, just as it was toward democratic institutions in politics. When a discriminating policy was adopted it was for retaliation, with the object of forcing other nations to remove their restrictions on American commerce.

⁵ Holland, Bernard, *The Fall of Protection*, p. 28. It is perhaps a little trite to recall that Adam Smith defended the navigation laws on the ground that defense is more important than opulence.

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On August 6, 1785, Adams wrote from London to Secretary Jay:⁶

Britain has ventured to begin commercial hostilities. I call them hostilities, because their direct object is not so much the increase of their own wealth, ships, or sailors, as the diminution of ours. A jealousy of our naval power is the true motive, the real passion which actuates them; they consider the United States as their rival, and the most dangerous rival they have in the world. I see clearly they are less afraid of an augmentation of French ships and sailors than American.

In 1784, Congress, under the Articles of Confederation, seeking among other things power to retaliate, said:⁷

Already has Great Britain adopted regulations destructive to our commerce with her West India Islands. There was reason to expect that measures so unequal and so little calculated to promote mercantile intercourse would not be persevered in by an enlightened nation. But these measures are growing into system. It would be the duty of Congress, as it is their wish, to meet the attempts of Great Britain with similar restrictions on her commerce.

Madison said in Congress on April 9, 1789:⁸

If America was to leave her ports perfectly free, and make no discrimination between vessels owned by her citizens and those owned by foreigners, while other nations make this discrimination, it is obvious that such policy would go to exclude American shipping altogether from foreign ports, and she would be materially affected in one of her most important interests.

⁶ Adams, Charles Francis: *The Works of John Adams*, Vol. 8, pp. 289-291; see also *Diplomatic Correspondence of the United States of America*.

⁷ United States, *Journals of Congress*, Apr. 30, 1784.

⁸ *Annals of Congress*, Vol. 1, Discussion in House of Representatives in 1789 on import and tonnage duties. Columns 112, 204, 206, Apr. 9, 1789.

But I am clearly of the opinion, that a discrimination will have the most salutary effects; it will redound both to the honor and interest of America to give some early token of our capacity and disposition to exert ourselves to obtain a reciprocity in trade.

I will not enlarge on this subject; but it must be apparent to every gentleman, that we possess natural advantages which no other nation does; we can, therefore, with justice, stipulate for a reciprocity in commerce. The way to obtain this is by discrimination; and, therefore, though the proposed measure may not be very favorable to the nations in alliance, yet I hope it will be adopted for the sake of the principle it contains.

Mr. Lloyd W. Maxwell, who has made an extensive and scholarly research into the original records, summarizes as follows the condition underlying the early shipping policy of the United States:⁹

From the quotations reproduced and the public documents referred to in the preceding pages, the following facts may be summarized:

(1) The chief commercial desire of America was reciprocal liberality guaranteed by treaty.

(2) Great Britain was the main obstacle to such liberty and agreement.

(3) Discrimination was resorted to by the United States defensively.

(4) Reliance upon discriminating duties was not expected to continue for a longer period than would be required to demonstrate the desirability of abolishing exclusions, prohibitions, and monopolies, and to establish liberal reciprocity. In other words, discrimination was a temporary plan employed as a means to the end of obtaining fair treatment from competitors.

Measures Adopted

The American Congress was scarcely two months old when, pursuant to this policy, it passed its first navigation

⁹ From *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany,"* March 7-11, 1924, Pt. 6, p. 296.

law, embodied in the tariff act of July 4, 1789. That act granted a discount of 10 per cent in customs duties on goods imported in vessels built either in the United States or abroad and owned by American citizens.¹⁰ In order to encourage direct trade, it imposed additional duties on teas imported from China and India in foreign vessels or by way of Europe.¹¹ Not content with these, Congress a little later enacted discriminating tonnage dues in favor of American ships,¹² and by the act of August 10, 1790, substituted for the 10 per cent discount provision an additional duty of 10 per cent on goods imported into the United States in foreign vessels.¹³

¹⁰ Tariff act of July 4, 1789, 1 Stat. 27:

"Sec. 5. . . . That a discount of ten per cent on all the duties imposed by this act shall be allowed on such goods, wares and merchandises as shall be imported in vessels built in the United States, and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the sixteenth day of May last, wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation."

¹¹ Act of July 4, 1789, Sec. 1, 1 Stat. 25.

¹² Act of July 20, 1789 (1 Stat. 27), provides:

Sec. 1. That the following duties shall be, and are hereby imposed on all ships or vessels entered in the United States, that is to say:

On all ships or vessels built within the said States, and belonging wholly to a citizen or citizens thereof; or not built within the said States, but on the twenty-ninth day of May, one thousand seven hundred and eighty-nine, belonging, and during the time such ships or vessels shall continue to belong wholly to a citizen or citizens thereof, at the rate of six cents per ton. On all ships or vessels hereafter built in the United States, belonging wholly, or in part, to subjects of foreign powers, at the rate of thirty cents per ton. On all other ships or vessels, at the rate of fifty cents per ton.

¹³ Act of August 10, 1790 (1 Stat. 181) provides:

Sec. 2. That an addition of ten per centum shall be made to the several rates of duties above specified and imposed, in respect to all goods, wares, and merchandise, which after the said last day of December next, shall be imported in ships or vessels not of the United States, except in the cases in which an additional duty is hereinbefore specially laid on any goods, wares, or merchandises, which shall be imported in such ships or vessels.

These measures constituted the chief aid to American shipping during its infancy. Congress granted some aid in the form of subsidies, but this means of protection was later abandoned.

Effect of Legislation of 1789

Advocates of discriminating duties have made much use of figures purporting to show that this early legislation had an immediate and amazing effect. It seems necessary, therefore, to point out that the figure cited as the total American tonnage in 1789 is really the tonnage entering port in the last five months of that year and that the figure for 1790—alleged to prove that discriminating duties more than doubled our tonnage in a single year—is merely the tonnage entering our ports during the *twelve months* of 1790. No total tonnage figures exist for the years before 1793; and even if a complete series were available, it would throw no light on the question of how far the development of American shipping was due to discriminating duties and how far to other causes.

Treaty Negotiation with England

Except for the Jay Treaty of 1794, which gave the United States and Great Britain in respect of each other the status of the most-favored nation (not national treatment), no attempt was made until 1806 to abolish the discriminations imposed by each on the trade and commerce of the other. But a convention signed in 1806 by American and British plenipotentiaries removed all discriminations of tonnage and impost on trade between the United States and British territories in Europe. The American representatives made a determined effort to have included within the terms of the convention the British North

American colonies and the British West Indies, but the unwillingness of Great Britain to include these colonies led to the rejection of the entire arrangement by the United States.

Following this failure of the United States to ratify the commercial convention of 1806, the two countries abandoned for the time all efforts toward reciprocity, each seeking instead to gain advantage by imposing further discriminations on the trade of the other. The controversy thus started was a contributory cause of the second war with Great Britain, and not until 1815 was another effort made for reciprocity. In March of that year Congress passed an act making our discriminating tonnage and customs duties inapplicable to the direct trade¹⁴ with any country removing all discriminations against American shipping.¹⁵ This evidence of a willingness on the part of the United States to enter into reciprocal relations with

¹⁴In considering our shipping history and policy at least six classes of trade should be kept in mind: (a) Trade between the United States and foreign countries. (b) Trade between the United States and colonies of foreign countries, *e.g.*, of Great Britain. (c) Trade between foreign countries or their colonies and another foreign country. (d) Trade between a foreign country and its colonies. (e) Trade between the colonies of a foreign country. (f) Coast-wise trade. As concerns the United States the first two of these classes are *direct* trade, while the remaining classes, except the last, are *indirect*.

¹⁵Act of March 3, 1815 (3 Stat. 224), provides:

“That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage, between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, be, and the same are hereby repealed, so far as the same respects the produce or manufacture of the nation to which such foreign ships or vessels may belong. Such repeal to take effect in favour of any foreign nation, whenever the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished.”

Great Britain led to the commercial convention of July 3, 1815, which is still in effect. Among other things, reciprocal national treatment was granted in the *direct* trade to the vessels of both parties in the trade between the United States and Great Britain and between the United States and "his Britannick Majesty's territories in Europe."¹⁶

The American plenipotentiaries again endeavored to obtain national treatment for American vessels in the British possessions in the West Indies and on the continent of North America, but Great Britain refused their request for trade in British possessions on an equal footing with British vessels. For this reason violent opposition to the treaty developed in Congress. Nevertheless, an act was passed March 1, 1816, repealing "so much of any act as imposes a higher duty of tonnage, or of impost on vessels and articles imported in vessels of Great Britain, than on vessels and articles imported in vessels of the United States, contrary to the provisions of the convention (of July 3, 1815) between the United States and his Britannick Majesty."¹⁷

Marine Reciprocity in the Indirect Trade

In 1822 the United States negotiated a treaty with France, by which discriminating duties were to be reciprocally abandoned within a period of six years, and discriminating tonnage dues to be limited in amount. By a series of treaties, with Denmark in 1826, with Norway, Austria-Hungary and the Hanseatic cities in 1827, with Prussia in 1828, and with Greece in 1837 dis-

¹⁶ Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1776-1909*, Vol. I, p. 624.

¹⁷ 3 United States Statutes at Large, 255. See Appendix V for the controversy which soon developed between the United States and Great Britain over the West India trade.

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criminating duties were abolished not only in the direct trade but in the indirect trade. The policy of these treaties was embodied in the Marine Reciprocity Act of 1828¹⁸ which made a general offer to all nations of the reciprocal abolition of discriminating duties. In that decade, when American shipping was decreasing, the fortunes of American trade and shipping must have been of unusual concern to American statesmen. They did not, however, denounce the treaty of 1815 with Great Britain or attempt to extend the policy of discriminating duties. On the contrary they did all that they could to abolish the system of discriminating duties both at home and abroad. They clearly traced the decline in our shipping to general economic causes.

The statesmen of the generation preceding the Civil War, a period when our shipping grew rapidly, believed that the success of our shipping was due to the initiative and courage of the American seamen and not to the greater efficacy of American discriminations as compared with foreign discriminations. The tariff was frequently revised after 1828 but the only reference to discriminating duties

¹⁸ The Marine Reciprocity Act of May 24, 1828, provides as follows:

"Sec. 1. That, upon satisfactory evidence being given to the President of the United States, by the government of any foreign nation, that no discriminating duties of tonnage or impost are imposed or levied in the ports of the said nation, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufacture, or merchandise, imported in the same from the United States, or from any foreign country, the President is hereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost, within the United States, are, and shall be, suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise imported into the United States in the same, from the said foreign nation, or from any other foreign country: the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and their cargoes, as aforesaid, shall be continued, and no longer."

was a provision aimed to compel foreign nations to respect the reciprocity treaties. Each tariff revision was, therefore, a reaffirmation of the policy of marine reciprocity.

Following the enactment of the law of 1828 the policy of marine reciprocity was made effective through the negotiation of commercial conventions with thirty or forty countries and through presidential proclamations setting forth that these countries had removed discrimination against American commerce and were, therefore, entitled to national treatment in American ports. These conventions and proclamations, together with the law of 1828, are the legal basis of American shipping policy.

*The Old Merchant Marine*¹⁹

Among the finest traditions in American history are the achievements of the old merchant marine. Beginning with the activities of colonial shipping our mariners continued to hold a prominent place in ocean carrying trade until the Civil War. In colonial days Americans, crowded into a narrow seacoast strip and limited in their interior development by lack of transportation, turned their energy to the sea and under the shelter of the British navigation laws and the stimulus of their own ambition developed a lucrative trade with Africa and the West Indies. With the coming of the revolutionary days American seamen became privateers. They preyed upon British commerce and were important factors in bringing to successful issue the revolution. After the revolution they were excluded from many trade routes by the British navigation laws, but before the adoption of the Constitution, when there was as yet no Congress to adopt retaliatory navigation laws, American mariners began to open up new trade routes. The port of Salem became world famous for its ship-

¹⁹ See Paine, Ralph D., *The Old Merchant Marine, The Chronicles of America*, Vol. 36.

building and for its ships and their masters. Excluded from the old trade routes of colonial history, they sought new ports in far-off lands. American ships rounded the Cape of Good Hope and Cape Horn and established themselves in the trade with China. The period between the founding of our government and the War of 1812 was a trying one for American ship owners and American seamen. Indeed, it was the issues of that period, particularly the impressment of American seamen, that brought on the War of 1812. In this war the laurels won by American seamen more than offset the disastrous land operations. Again it was the privateers who contributed to the successes of American arms for by 1815 they had freed the sea of many of the hindrances to shipping development. During this period the packet and the clipper ships came into renown. The packet monopolized trans-Atlantic traffic throughout the forties, by which time subsidized steam navigation in the hands of the British broke their monopoly. The graceful clipper became supreme on every sea and established records for speed of which even steam vessels might be proud. It was most conspicuous in the China trade, both with the United States and Great Britain, and in the trade around Cape Horn to California after the discovery of gold in 1849. It also gave way to steam navigation.

Even the briefest historical survey of the American merchant marine before the Civil War suffices to show its success was not due to the navigation laws enacted by Congress. These laws no doubt contributed and on occasions were of great assistance to merchant shipping, but the basis of America's success on the sea lay in the indomitable energy and genius of the American citizen. After the last vestige of discriminating duties had vanished in 1849, American tonnage continued to increase. For the

first time in history, our tonnage doubled in six years: 1849, 1,258,756 tons; 1855, 2,348,358 tons. In these six years the increase of tonnage was practically equal to the total growth in the sixty-one years during which discriminating duties were more or less in force.

Decline of Old Merchant Marine

Following the panic of 1857 and the Civil War, American energy was diverted to other activities than shipping. Referring to this situation, Ralph D. Paine has said:²⁰

The American spirit had ceased to concern itself with the sea as the vital and dominant element. The footsteps of the young men no longer turned toward the wharf and the water-side and the tiers of tall ships outward bound. They were aspiring to conquer an inland empire of prairie and mountain and desert, impelled by the same pioneering and adventurous ardor which had burned in their seafaring sires. Steam had vanquished sail, an epochal event in a thousand years of maritime history, but the nation did not care enough to accept this situation as a new challenge or to continue the ancient struggle for supremacy upon the sea. England did care, because it was life or death to the little, sea-girt island, but as soon as the United States ceased to be a strip of Atlantic seaboard and the panorama of a continent was unrolled to settlement, it was foreordained that the maritime habit of thought and action should lose its virility in America. All great seafaring races, English, Norwegian, Portuguese, and Dutch, have taken to salt water because there was lack of space, food, or work ashore, and their strong young men craved opportunities. Like the Pilgrim Fathers and their fishing shallops they had nowhere else to go.

Now that the continent has been settled is it not probable that American capital and energy will again turn to the development of a merchant marine and may we not expect the new merchant marine to achieve glories comparable to those which the old wrote into history?

²⁰ *Ibid.*, p. 178.

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Effect of World War on American Shipping

Except for a few sporadic efforts to revive the American merchant marine the overseas trade of the United States was carried under foreign flags from the Civil War until 1914. A substantial fleet was built up in the coastwise trade and on the Great Lakes and one or two efforts were made to encourage shipping by mail subventions, but the real impetus to American shipping came only with the abnormal conditions created by the war of 1914-18. At the beginning of the war the total tonnage of the sailing, steam, and gas vessels of the American merchant marine was 7,928,688 gross tons; by 1920 it had risen to 16,324,024 gross tons and by 1923 to 18,284,734 gross tons. The increase is more striking when the tonnage engaged in foreign trade alone is considered. Under the shelter of our coastwise laws, assuring to American ships a monopoly of trade between American ports, the tonnage entered for this trade has for many years been between six and seven million gross tons. Between 1861 and 1887 our foreign trade tonnage declined from about 2,500,000 tons to less than 1,000,000; between 1887 and 1912 it did not once reach a million gross tons, while in 1913 and 1914 it exceeded a million tons only by a few thousands gross tons. By 1920, however, it had become 9,924,694 gross tons and by 1923, 9,069,342 gross tons.

In comparison with other nations our gross tonnage is second only to Great Britain. Lloyd's Register gives the total merchant *steam* tonnage of the world as follows:

	1914	1920	1923	1924
	45,403,877	53,904,688	62,335,373	61,514,140
Increase over 1914,		8,500,811	16,931,496	16,110,263

The same authority gives the total steam tonnage of the United States (not including the Philippines) as follows:

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1914	1920	1923	1924
4,286,349	14,524,691	15,623,229	14,706,507

It appears, therefore, that this country controlled 27 per cent of the world's merchant steam tonnage in 1920, 25 per cent in 1923, and 24 per cent in 1924, whereas in 1914 it controlled only 9.6 per cent.

Another equally important index of the progress of American shipping is the increase in the amount of our seaborne trade carried in American bottoms. In 1914, 11.4 per cent of our imports were carried in American vessels. In 1920 the percentage had risen to 39, and in 1921 to 40.6; in 1923 it was 32.4. In 1914, 8.3 per cent of our exports left our shores in American ships. In 1920 the corresponding percentage was 45.2; in 1921, 39.4; and in 1923, 38.8.

Declaration of Policy

The merchant marine policy of the United States is embodied in the shipping act of 1916, in the Merchant Marine Act of 1920, and in the President's message of February 28, 1922. The preamble of the act of 1916 reads as follows:

"An Act To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries. . . .

The preamble of the act of 1920 is more definite and states the policy as follows:

"That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater

portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine."

Attempts to Revive Discriminating Duties

A striking change, however, has taken place in one phase of the policy declared by the Merchant Marine Act of 1920. The keystone of that act was section 34²¹ authorizing and directing the President to denounce all commercial treaties which granted to foreign nations national treatment with reference to customs duties and tonnage dues. The treaties already referred to, some twenty in number, were negotiated by this country after the adoption of the policy of marine reciprocity, and have been the basis of our commercial relations since the twenties of the last century.

This policy of discriminating duties was proposed on the ebb-tide following the war. Its full significance was not realized at the time. In their efforts to frame a marine policy it was perhaps not unnatural that there should be an effort to return to the old mercantilist practices which have made navigation laws a byword in the rivalry of nations. President Wilson first, and later Presidents Harding and Coolidge, refused to carry out the provisions of section 34, and the treaties guaranteeing to other nations national treatment in customs duties and tonnage dues, therefore, remained in force. Our national leaders were unwilling to destroy the entire structure of our international commercial relations for the purpose of establishing a shipping policy whose desirability was by no means assured. It was recognized that only a limited part of our

²¹ See note page 43, *supra*.

commerce would be affected by discriminating customs dues since they would not apply to our export trade or to goods admitted into the United States free of duty.²²

Arguments against Discriminating Policy

A very insistent minority urged the denunciation of our commercial treaties and a return to the practice of preference to American ships in customs and tonnage duties. It opposed the ratification of the treaty of commerce with Germany for the reason that it continued our traditional policy of reciprocal national treatment in shipping.²³

The early history of American shipping has been a popular theme with partisan writers and propagandists, who with a thesis to prove, have juggled statistics and shaped them to their purpose. It may therefore be well to restate that the fathers of the Republic adopted the policy of discriminating duties in favor of American shipping as a measure of retaliation against the harsh navigation laws of other countries, particularly those of

²² H. Rept. No. 1112, 67th Cong., 2d sess. (June 16, 1922) says (Sen. Doc. No. 935, 67th Cong. 4th sess, p. 16):

"The hoped-for aid from preferential tariffs was not realized because of the refusal of President Wilson to abrogate those portions of certain commercial treaties with foreign nations which forbade preferential treatment of our ships as against the ships of other nations. After long deliberation and careful investigation, President Harding concurred with President Wilson, and thus both a Democrat and Republican president are in accord that, for the time at least, the provisions of section 34 can not be carried out.

"Even if the provisions of section 34 had been made effective the benefits to be derived therefrom would have been only from inbound cargo and on dutiable articles. When it is considered that our imports are approximately only one-third of our exports, and of this portion about 30 per cent dutiable goods only would be affected, it may readily be conceded that these provisions might not have produced the results expected of them."

²³ *Hearings before the Committee on Foreign Relations, United States Senate, on* "Treaty of Commerce and Consular Rights with Germany," Pt. I to VI, 1924.

Great Britain. At a period when commercial intercourse was characterized by exclusion and extreme national preference, this policy served to retain for American ships a share of the world trade, although it was not the constructive force which built up the American merchant marine. After being tried under conditions infinitely more favorable than those which exist at the present time it was definitely abandoned in favor of marine reciprocity, long the objective of American statesmen. The early experience of the United States with discriminating duties in favor of national shipping is an argument against returning to them.

If discriminations at home and abroad were not of net advantage to our trade when we exported only raw materials and foodstuffs, what assistance would they be to-day and what would be the additional dangers of provoking retaliation now that our export trade consists largely of manufactured articles?

In 1906, the Merchant Marine Commission, after a thorough investigation of the needs of the American Merchant Marine, found affirmatively against the adoption of a system of discriminating duties. The reasons given for not recommending this policy apply with even greater force to-day than they did in 1906. The memorandum of the commission²⁴ given below has been brought down to date by inserting percentages for the year 1922 in parentheses.²⁵

²⁴ The membership of this commission was as follows: (Senators) Hon. Jacob H. Gallinger, New Hampshire, chairman; Hon. Henry Cabot Lodge, Massachusetts; Hon. Boies Penrose, Pennsylvania; Hon. Thomas S. Martin, Virginia; Hon. Stephen R. Mallory, Florida; (Representatives) Hon. Charles H. Grosvenor, Ohio; Hon. Edward S. Minor, Wisconsin; Hon. William E. Humphrey, Washington; Hon. Thomas Spight, Mississippi; Hon. Allan L. McDermott, New Jersey.

²⁵ *Hearings before the Committee on Foreign Relations, United States Senate*, on "Treaty of Commerce and Consular Rights with Germany," Jan. 31, 1924, Pt. 2, pp. 55-57.

Discriminating Duties

The historic policy of discriminating duties which the United States maintained in full to 1815 and in part as late as 1828, and even 1849, occupied so large a place in the inquiry of the Merchant Marine Commission that it is well to make at once a frank explanation why a return to this policy at the present time has not seemed wise to a majority of the commission.

It is probable that when the commission was appointed a majority of those Senators and Representatives composing it who had positive views favored another trial of the discriminating duty policy and believed that that course would be recommended to Congress. Moreover, from the very beginning of the inquiry powerful arguments for the discriminating duty plan were advanced, especially by the Maritime Association of the Port of New York, the largest shipping trade organization in America. This policy of the fathers of the Republic, as it was well described, was ably advocated not only by many practical shipowners and shipbuilders but by many manufacturers and merchants, usually however, in connection with the policy of mail subventions to regular lines, which may be said to have met with almost unanimous support in every section of the country.

Treaties in the Way

These arguments had a very great effect upon the commission, but at the same time some very serious objections were disclosed in the radical difference of mercantile conditions between the first half of the nineteenth century and the first decade of the twentieth century. In the first place, there were the thirty commercial treaties with foreign governments, the very foundation of our modern commercial relations, which prohibit both discriminating custom duties and discriminating tonnage dues. These treaties of course could be abrogated, but notice of this would have to be given a year in advance, and new treaties without a discriminating-duty clause negotiated on terms as favorable as before. This, manifestly, would be a difficult though not an impossible undertaking.

The Risk of Retaliation

Far more serious than the abrogation and renegotiation of thirty commercial treaties would be the almost certain retaliation of foreign governments. It is true that if they retaliated only against our shipping they could not do much harm, for an American vessel, even direct from the United States, is seldom seen now in European waters. But these foreign governments would probably shape their retaliation where it would hurt and be effective, against our export trade in general, by discriminating duties on the products of our agriculture and our manufactures.

Indeed, certain important commercial associations of the Central West, while strongly favoring the development of the merchant marine, sent to the commission a formal remonstrance against the adoption of the discriminating-duty policy because of the danger of foreign retaliation that would be provoked by it against the export trade of the United States. In this connection the fact is worth considering that in the years from 1789 onward, when the discriminating-duty policy was practiced with so much success, the United States imported far more than it exported, so that discriminating duties were applicable to the larger part of our foreign trade, while now the United States exports very much more in both bulk and value than it imports, so that not only would discriminating duties be less effective for the encouragement of American shipping, but foreign retaliation would be far easier and more injurious.

Abolishing the Free List

But the weightiest of all objections to a return to the discriminating-duty plan is neither the treaties nor retaliation, but the fact that in order to apply these duties for the adequate encouragement of the merchant marine, the free list of the tariff, covering almost half of the foreign commodities we purchase and consume, would have to be abolished. It is safe to say that this consideration counted more heavily than any other in bringing the majority of the commission reluctantly to the conclusion that discriminating duties could not now be invoked for the object we all desire, the rehabilitation of the American merchant marine in foreign trade.

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Nearly Half in Value Now Free

In the fiscal year 1903, 42 per cent; in 1904, 47 per cent, and in 1905, 46 per cent of our entire imports came in free of customs duty (in 1922, 60 per cent). This is in value; in bulk, inasmuch as these free imports were largely foods and raw materials, probably 60 or 70 per cent were free (in 1922, 75 to 80 per cent). In other words, unless the free list were abolished, discriminating duties could be applied to the encouragement of not more than 30 or 40 per cent of American shipping engaged in general foreign trade (in 1922, 20 to 25 per cent).

On the other hand, if the free list were abolished, and these free articles made dutiable, the result would be an increase in the cost of certain foods of the American people and certain crude materials of their manufacturing, for those free articles are, as a rule noncompetitive products, chiefly from tropical countries, which can not, even under a duty, be produced in the United States. In 1789 and afterwards, when discriminating duties were so successfully applied for the encouragement of our shipping, nearly all imports were dutiable and such a thing as a free list was scarcely known to our own or any other government.

The Indirect Trade

There are strong political as well as commercial reasons why, if we are to have any American ships at all, we should have them in the trade with our sister Republics of this continent and the great neutral markets of Asia. In fact, the specific form in which discriminating duties have been most often and earnestly advocated before the commission has been as applying to the so-called "indirect trade," that is, not against a British vessel bringing British goods, or a German vessel with a cargo from a German port, but against European craft that seek to invade our carrying trade with Brazil or China or other neutral nations. It has been urged that discriminating duties in this indirect trade would not be so likely to provoke European retaliation as if the duties were imposed against British or German ships bringing goods of their own country. And it has been urged also that discrimination in the indirect trade, while arousing the least possible resentment, would give our vessels entire control of our trade with the nonshipping peoples of South America and the Orient.

A Larger Part Free

Unfortunately, however, it is this very trade with South America and the Orient that can not be gained for American ships unless the free list is abolished, for most of the products of those southern and eastern countries are now and long have been non-dutiable in the ports of the United States. Thus, when the commission looked into this question it found that 98 per cent of our imports from Brazil (1922, 97 per cent), 96 per cent from Chili (1922, 97 per cent), 81 per cent from Colombia (1922, 99 per cent), 80 per cent from Venezuela (1922, 99 per cent), 82 per cent from Ecuador (1922, 97 per cent), or 82 per cent of all our imports from South America (1922, 84 per cent), and 94 per cent from Central America (1922, 87 per cent), were absolutely free of duty. In our import trade with China 50 per cent (1922, 75 per cent), with Japan 64 per cent (1922, 88 per cent), and with India 69 per cent (1922, 72 per cent), are free of duty. Unless the free list were abolished discriminating duties could not adequately encourage American shipping to engage more largely in commerce with the Republics to the south of us and the great markets of the Orient.

If conditions were everywhere as they are with our trade in Europe, where the free imports represent 28 per cent (1922, 35 per cent), or our trade with Cuba, whence we import chiefly sugar and tobacco and only 17 per cent of our purchases are on the free list (1922, 4 per cent), discriminating duties could be effectively applied for aid to American shipping. But the long series of public hearings before the commission has made it unmistakable that the American people desire American ships, not only in our Cuban trade, but also and especially in our trade with South America and the Far East. Discriminating duties would not give us American ships in these important trades unless the free list were abolished, and here is the most urgent of the several reasons why the discriminating-duty policy has not been recommended by the majority of the commission. The plan of mail and other subventions embodied in the bill of the commission was finally adopted because it is both more equitable and more effective.

Either Plan Will Cost

These subventions will cost something. So, too, would it cost something to apply discriminating duties by the method suggested of reducing the duties on goods imported in American

vessels. In either case it is necessary, in order to make this encouragement of shipping adequate and effective, to equalize the difference in wages and cost of construction between American and foreign ships, and in some cases to offset foreign subsidies. American ships in order to reach an equality of conditions must either receive a certain sum in subvention or retain an equivalent from the reduced duty in the form of higher freight rates.

In the long run, it is likely to be found that the subvention plan will involve the less actual cost to the Treasury.

Denunciation of Treaties

All the commercial treaties to which the United States is to-day a party and which constitute in part the protection to American overseas commerce contain reciprocity pledges of national treatment with regard to shipping. Before Congress, therefore, could adopt discriminating duties in favor of national shipping, it would be necessary to denounce all these treaties. As security and stability are the chief objects sought in the negotiation of commercial treaties, their denunciation would be accepted not as merely leaving us free to adopt a discriminating policy in favor of American shipping, but as a declaration in favor of such a policy. Discriminations or fear of discriminations would inevitably result, and the element of uncertainty and insecurity would be introduced into our foreign commercial relations.

Retaliation

The probability of retaliation is much greater under post-war conditions than was the case in 1906. National sentiment abroad is more unreasonable and more inclined to extreme measures in international relations. Abandonment by the United States of its policy of marine reciprocity would be accepted as a notice to the world that we are about to enter upon a policy of discrimination in favor of American shipping. Such a step would bring

into operation existing retaliatory provisions in the laws of certain states and would furnish an excuse to other nations to adopt similar measures.

Advocates of discriminating duties profess to entertain no fear of retaliation, but it is safe to venture the opinion that if the British, for example, should find their shipping under attack they would not only support but demand duties on products imported from the offending nation. History shows that patriotism and sentiment are often stronger motives than economic advantage. At the present time Great Britain, Canada, Australia, New Zealand and South Africa are all buying from each other goods which they could obtain at a greater advantage from the United States. (See Appendix II.)

In connection with the likelihood of retaliation by foreign countries, the convention and statute²⁶ adopted by the Second General Conference on Communications and Transit, Geneva, 1923, is significant. The conference was held November 15 to December 8, 1923, at Geneva, under the auspices of the League of Nations and was participated in by forty nations. The convention and statute which it adopted specifically prohibit the contracting states from discriminating between their own and foreign vessels with respect to import duties on cargoes, tonnage taxes on the vessels, and preferential rail rates. It further specifically authorizes in the following words retaliatory measures against any nation found to be making discriminations (Article 8):

Each of the contracting states reserves the power, after giving notice through diplomatic channels, of suspending the benefit of equality of treatment from any vessel of a state which does not effectively apply, in any maritime port situated under its sover-

²⁶ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany,"* March 7 and 11, 1924, Pt. 6, p. 302.

eignty or authority, the provisions of this statute to the vessels of the said contracting state, their cargoes and passengers.

Shipping Discriminations and the Policy of Protection

Doubt has been expressed as to whether the policy of equal treatment of ships, irrespective of nationality, is consistent with that of protection to American industries. It may be sufficient to recall that the British treaty of 1815 was negotiated by the same men who passed the tariff act of 1816 and that the treaties of 1822, 1826, and 1827, were negotiated and the marine reciprocity act of 1828 passed by the same men who enacted the tariffs of 1824 and 1828. Evidently therefore the repeal of existing discriminating duties one hundred years ago was not regarded as an attack on the protective system, and any suggestion that the maintenance of the status quo should now be regarded as an attack on protection would find little support in that precedent. The repeal of a law on the ground that it affords no effective protection is not an attack on protection as such. Every mistaken and ineffective tariff measure is a blow to the protective system. Furthermore discriminating duties are likely to affect the tariffs of a score of foreign countries, raising them upon American goods and goods carried in American ships.

In commercial policy there is a fundamental difference between shipping and industries wholly within the country. While protective tariffs are useful in the home market, they are no help to the foreign trade of an industry. Shipping is only a semi-domestic industry, one-half of its business being carried on in ports to which our laws do not extend. In protecting our inbound trade we invite retaliation against our outbound trade and we invite discrimination and exclusion in the indirect and colonial trade of other states whose good-will may be of great importance to us if we ever become a shipping nation.

Preferential Import and Export Rates on Railroads

Section 34 is not the only hasty and ill-considered provision of the Merchant Marine Act of 1920. Even before this act was enacted special import and export rates were adopted with a view to equalizing the commercial advantages of rival ports and alternative routes, over which the commerce of the United States is carried, and these were applied without reference to the nationality of the ocean vessels in which the traffic was carried. The intention was to establish a workable basis of competition between the main ports and seaboards and the several transportation routes. In general, the policy was to use the rates of some selected port as the basic or key rates upon which to determine those for other ports. For example, on central-western states traffic the New York rates were generally the basic rates for practically the entire eastern seaboard. Briefly stated, the effect of this relationship in rates, as applying to import traffic from Norfolk, Baltimore, and Philadelphia, was to reduce them by the amount of certain differentials below the New York rates, and to make the Boston rates the same as from New York. From Portland (via the Grand Trunk System) and from Canadian ports the rates were practically the same as from Baltimore, except that those from Halifax were slightly higher. The Baltimore or Norfolk rates applied from South Atlantic ports to a limited number of points, while from the Gulf ports the New York or Baltimore rates applied with variations according to the commodity, except that on traffic from Europe and Africa the rates were qualified by certain differentials reducing them below the New York rates.

A similar basis was employed in arriving at rates on export traffic. Among the exceptions to this practice, however, were that the New York rates applied to Port-

land, Maine, by way of the Grand Trunk system, and to Canadian ports other than to Halifax and Montreal. The rates to Halifax were slightly higher than those to New York, while to Montreal the Philadelphia rates governed. To South Atlantic ports the New York or Baltimore rates applied according to territory of origin. On export grain and grain products Baltimore was selected as the basic port with the rates to the other ports the same, or as adjusted by certain differentials of varying effect, as those to Baltimore.

From and to Key West, Florida, import and export rates were higher by certain amounts than the rate via Gulf ports or Jacksonville, Florida.

In 1918, during the period of Federal control of the railroads, all special rates then in effect on import and export traffic at the ports of New York, Philadelphia, and Baltimore and import rates from Boston were canceled; domestic rates were substituted except that to the ports of New York and Philadelphia on export grain and grain products the lower basis of certain differentials over the rates to Baltimore was continued. At other ports all rates were later revised so as to reflect the long established relationship to the New York or Baltimore rates.

The 1918 revised adjustment at the eastern seaboard would probably have continued except for the unequal percentage increase in all rates authorized by the Interstate Commerce Commission which practically destroyed the previous relationship. The rates at the southern ports were considerably lower than at New York, the key port, and other northern ports, so that later it was necessary for the carriers serving the northern ports to establish new import and export rates on a number of important commodities in order to compete with their southern rivals, with the result that there are in effect at all the ports on

important commodities special import and export rates, lower than on like domestic traffic.

On specific commodities moving to and from Asia, Australia, New Zealand, Fiji Islands, Mexico, Central and South America as well as the Philippine and Hawaiian Islands special export and import rates have been in effect at the Pacific ports, including those in Canada, for a number of years. These lower rates, which are in many instances blanketed to and from practically all points east of the Rocky Mountains, are due directly to the Trans-Continental carriers' desire to compete for traffic through the Pacific ports. This competition had to meet the low all-water rates at the Atlantic ports and also the low level of rail rates between these ports and the interior which had resulted in diverting considerable traffic through the ports of the eastern seaboard at the expense of the carriers serving Pacific ports.

In section 28 of the Merchant Marine Act of 1920 an attempt was made to use the special import and export rates as an aid to American shipping and to apply them only to goods arriving or leaving in American ships. Congress provided "That no common carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, . . . any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is . . . documented under the laws of the United States."

Attempts to Put Section 28 into Effect

Soon after the law was enacted the U. S. Shipping Board, in accordance with the provisions of the section,

certified to the Interstate Commerce Commission that the shipping facilities of American vessels were inadequate and, accordingly, that Commission suspended the provision of the section and preferential import and export rates therefore continued to be applied on American railroads without distinction as to nationality. In February, 1924, however, the Shipping Board certified to the Interstate Commerce Commission that with certain exceptions adequate shipping facilities to handle the transportation of all commerce were afforded by vessels documented under the laws of the United States. The Interstate Commerce Commission thereupon lifted the suspension of the section and announced that it would be effective as of May 20, 1924 (later changed to June 20). This action precipitated a discussion as to whether section 28 would always operate to the benefit of American commerce.²⁷ It was pointed out that preferential import and export rates had been established primarily to equalize the flow of traffic through various ports and that to restrict the application of these rates to goods transported in American ships only, might not only lead to retaliation by foreign governments, but to a further concentration through the more or less congested eastern ports. The matter was discussed in Congress and at length was brought before the Interstate Commerce Commission.²⁸ Finally, even the Shipping Board came to doubt the utility of the policy set forth in section 28 and under date of May 8, 1924, certified to the Interstate Commerce Commission that "doubt has arisen whether shipping facilities under the American flag are adequate in all respects to the trade ranges specified

²⁷ *Letter from the Chairman of the Interstate Commerce Commission to the Chairman of the Interstate Commerce Committee of the Senate*, dated March 15, 1924.

²⁸ Interstate Commerce Commission, Ex Parte No. 86. Decided April 19, 1924.

in said certification of February 27, 1924," and it, therefore, withdrew its February certification. The Interstate Commerce Commission thereupon restored its order of suspension and preferential import and export rates on American railroads continued to be applied without distinction as to the nationality of vessels.

Special Import and Export Rates in Other Countries

The practice of fixing special import and export rates is not confined to the United States. In many foreign countries such rates have been established to develop national industries, to enlarge foreign markets, to increase traffic for the national railways, and, as in the case of the United States, to equalize conditions between rival ports. On the other hand, there have been cases in which higher import rates were quoted than on similar domestic traffic, for the purpose of protecting domestic industries and in some cases these have been discriminatory. The Prussian State railways, for example, assigned American pine to the same classification as the more valuable species of lumber such as ebony, teak, and walnut, but granted to Swedish pine a much lower rate.

On the state-owned railways of Germany,²⁰ the ruling consideration in the establishment of import and export rates was the development of foreign markets for German manufactured products and the increase of traffic for German railways. The special export rates to the Levant and to East and South Africa were restricted to exports carried in German ships. In Great Britain special import and export rates are comparatively rare on account of the shortness of hauls, but some export rates lower than those applicable to domestic traffic have been granted in cases of large shipments. In Canada competition with Ameri-

²⁰ Clapp, Edwin J., *The Port of Hamburg*, Chap. vi.

can railways and high marine insurance charged on shipments over the Montreal route has led to the fixing of special import and export rates. In Australia, where protection seems to have been the chief object in the fixing of import rates, certain imported articles are given a higher classification than similar articles of domestic production, and an effort has been made to encourage export trade by establishing lower rates for export or by granting a refund of the domestic rate.

The Extension to the Philippine Islands of the Coastwise Shipping Laws of the United States

The Merchant Marine Act of June 5, 1920, provides (sec. 21) for the extension of the coastwise shipping laws of the United States from and after February 1, 1922, "to the island Territories and possessions of the United States not now covered thereby." Such extension is made conditional upon the establishment of adequate shipping service under the American flag, and the President is authorized to postpone the date of such extension until he is assured of the existence of satisfactory shipping facilities. In conformity with this provision,³⁰ the coastwise laws of the United States have already been extended to Guam and Tutuila, and the date for their extension to the Virgin Islands has been postponed to May 1, 1925.

It is especially provided that the extension of the coastwise laws of the United States "shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been established as herein

³⁰ The Panama Canal Zone is not affected by this provision, as it is not regarded as an island Territory or possession.

provided and fix a date for the going into effect of the same."

From this provision the following deductions may be made:

(1) The extension to the Philippine Islands shall not take effect until the President declares, by proclamation, that adequate shipping service has been established.

(2) The proclamation shall not be made until the President has made, or has had made, a full investigation of the "local needs and conditions."

(3) The investigation of "local needs and conditions" must include consideration of the effect of this extension upon our international tariff policy, inasmuch as problems of tariff and of shipping are to some extent interdependent.

Viewed from a purely national standpoint it may appear natural that the United States should reserve to itself a monopoly of transportation between our mainland and the islands, but such action raises the whole issue of our relations with other countries and is capable of provoking retaliation. The avoidance of this possibility creates a problem which centers in the converging tendencies expressed in: (1) our coastwise shipping policy; (2) our Philippine policy; (3) world colonial policy.

The second of these has been treated in an earlier chapter;³¹ the other two will now be considered.

History of Coastwise Policy toward Philippines

Since 1817 the coastwise trade of the United States has been reserved to American ships, and even before that time the result had been achieved indirectly. By the act of July 30, 1789³² (in force August 15, 1789), American-owned vessels engaged in coasting trade were required

³¹ See p. 246 *et seq.*, *supra*.

³² 1 United States Statutes at Large, 27.

to pay a duty of 6 cents per ton only once a year, whereas foreign-built and foreign-owned vessels were required to pay the foreign tonnage duty of 50 cents per ton on each entry.

Not until 1902 did the Philippines figure in legislation designed to aid American shipping in the Philippine-American trade. The act of March 8, 1902, aided American vessels both directly and indirectly, a direct preference being embodied in section 3 which imposed upon *foreign* vessels entering ports of the United States from the Philippines the same tonnage dues as were leviable upon vessels coming from foreign countries.³³ Indirect aid was given by section 2, which exempted manila hemp and certain other Philippine products from export duties in the Philippine Islands as well as from import duties in the United States, provided imports came *direct* to the United States for use and consumption therein. This provision allowed either American or foreign vessels to transport hemp directly. In practice it is found that requirements of direct transportation tend to encourage national shipping. In this instance the provision, together with the exemption from export duty, operated to divert exports of hemp from Great Britain to the United States.

Between 1904 and 1908 it was the declared policy of Congress to extend the coastwise shipping laws of the United States to the Philippine trade. To this end a law was enacted April 15, 1904,³⁴ effective July 1, 1906. Before that date arrived, however, the application of the

³³ 32 United States Statutes at Large, 54.

³⁴ "Section 3. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Archipelago which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries."

³⁵ United States Statutes at Large, 181.

law³⁵ had been postponed; it was finally repealed by act of April 29, 1908.³⁶

The act of August 5, 1909,³⁷ established virtual free trade between the Islands and the United States, but again conditioned these exemptions from duty upon *direct* shipment. This, of course, tended to encourage the use of American shipping in the outward as well as the inward trade.

Preference in respect to exemption from tonnage taxes is now accorded to Philippine vessels, as well as to American vessels. The act of July 1, 1916, provided that "Vessels owned by citizens of the Philippine Islands and documented as such by the government of said islands shall hereafter be exempt in ports of the United States from payment of tonnage taxes and light dues."³⁸

The Merchant Marine Act of June 5, 1920, with its sweeping provision to extend the coastwise laws of the United States "to the island Territories and possessions of the United States not now covered thereby," was the next legislative step of material concern to the Philippine Islands. The regulation of commerce within the Philippine Archipelago, however, is left to the government of the Philippines "until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands." This last provision, included in previous bills as well, contemplates the extension of the

³⁵ Act of April 30, 1906, making a further postponement until April 11, 1909 (34 United States Statutes at Large, 154).

³⁶ 35 United States Statutes at Large, 70.

³⁷ 36 United States Statutes at Large, 84; "Sec. 5. . . . *And provided further*, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands, into the United States, shall be conditioned upon the direct shipment thereof from the country of origin to the country of destination. . . ."

³⁸ 39 United States Statutes at Large, 286.

coastwise laws of the United States to the coastwise trade of the Philippines when conditions permit.

The entire series of legislative acts enumerated above suggests an unconcealed desire on the part of Congress to extend the policy of shipping exclusion. Three times have American interests witnessed the passing of laws to exclude foreign ships from the Philippine-American trade—each time basing their hopes on the future. Twice these hopes failed to materialize, and corrective measures became necessary, in 1906 a postponement and in 1908 a repeal. When the dates of enforcement approached, it was still clear that an attempt to exclude foreign vessels would result only in diverting to other nations the bulk of the foreign trade of the Philippines. By 1908 the immediate prospect of excluding by prohibition had become obviously impracticable in spite of the fact that from 1902 on American vessels had enjoyed certain advantages in the trade.

The review suggests an anxiety akin to impatience on the part of American shipping interests in grasping for the monopoly of the carrying trade to and from the Philippines.

The following tables show the value of the Philippine-American trade, carried in American and foreign vessels:

*Domestic Exports from the United States to the Philippines,
Calendar Year, 1921.*

TOTAL VALUE MERCHANDISE EXPORTED TO THE	
PHILIPPINES	\$46,450,000
Carried in vessels	45,604,000
American:	
Value	20,199,000
Per cent of total shipping trade	44.3
Foreign:	
Value	25,405,000

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Per cent of total shipping trade	55.6
British—	
Value	22,714,000
Per cent of total shipping trade	49.8
Japanese—	
Value	2,355,000
Per cent of total shipping trade	5.2
Dutch—	
Value	330,000
Per cent of total shipping trade7
Belgian—	
Value	6,000
Per cent of total shipping trade	
Carried in cars and other land vehicles	846,000

Imports into the United States from the Philippines, Calendar Year, 1921.

TOTAL VALUE MERCHANDISE IMPORTED FROM THE	
PHILIPPINES	\$52,162,000
Brought in vessels	50,063,000
American:	
Value	25,990,000
Per cent of total shipping	52.0
Foreign:	
Value	24,073,000
Per cent of total shipping	48.0
British—	
Value	13,206,000
Per cent of total shipping	26.4
Japanese—	
Value	5,470,000
Per cent of total shipping	10.8
Dutch—	
Value	5,002,000
Per cent of total shipping	10.0
Danish—	
Value	13,000
Per cent of total shipping03
French—	
Value	800
Per cent of total shipping	

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All other—	
Value	381,000
Per cent of total shipping8
Brought by parcel post	2,098,000
Total free of duty	\$52,139,000
Total subject to duty	22,000

World Colonial Policy

The policy under which a nation excludes others from its colonial markets, particularly as applying to the carrying trade between the mother country and the colony, is a heritage from the earliest period of colonial expansion. Until the Napoleonic wars commercial rivalry was dominated by exploitation, mercantilism, and monopoly. It was chiefly by means of commercial treaties that these objectionable practices gradually gave way to more enlightened methods, first to discriminations in taxes and tariffs and later to equality of treatment.

To-day the important nations pursuing an open-door policy in respect to shipping between the mother country and the colonies and among colonies themselves, are: Great Britain, the Netherlands, Belgium, and Italy.

The old navigation laws under which Great Britain reserved to her own shipping the carrying trade between different parts of her Empire were finally repealed in 1849, so that now the carrying trade within the British Empire, in so far as it is controlled from London, is open to the ships of all nations without restrictions of any kind. The trade between Holland and her colonies is open to vessels of "reciprocating countries,"³⁹ which means colonial powers that permit Dutch ships to trade between the

³⁹ If American vessels had not already been excluded from trade between the Netherlands and the Dutch East Indies because of the exclusion of Dutch vessels from the trade between the United States and Porto Rico, that result would certainly follow from the exclusion of Dutch vessels from the Philippine-United States trade.

mother country and the colony and apparently also non-colonial powers. Belgium and Italy do not, and Germany did not, restrict to the national flag the shipping engaged in the colonial trade, though they all grant or granted subsidies, subventions, or some kind of indirect aid.

France, Canada, Australia, and the British West Indies have legislative restrictions similar to those applying to the trade between the United States and the Philippines—namely, those confining preferential tariff rates to products transported *directly*. “Directly” usually means direct from the country of origin, but Canada permits entry from any British possession, and the laws or decrees of all the countries mentioned, including the United States, allow trans-shipment in certain cases. It may be observed that legislation of the countries named permits foreign as well as national vessels to engage in the *direct* transportation of products dutiable at preferential rates and to engage in transportation *direct* or *indirect* of products upon which no preferential reduction is allowed; but transportation in national vessels is in fact stimulated by this type of legislation. It is obvious that in the trade between France and her colonies, for instance, the provision operates to prevent importation of dutiable goods through entrepôt points.

Portugal grants in a large part of her trade with her colonies preferential tariff rates or additional preferential reductions in case goods are transported in national bottoms.

A few nations still require that their colonial trade shall be conveyed in national vessels. The United States has long made this requirement for trade with Porto Rico. This policy is also pursued by Spain, in part by Portugal, and in part by Japan,⁴⁰ who restrict coastwise navigation

⁴⁰ France applies her coastwise shipping laws to the trade with Algeria; but Algeria is not officially a “colony” of France. The pref-

to national vessels and interpret coastwise trade to include possessions or colonies. In none of these cases is the policy applied to colonies as distant from the mother country as are the Philippines. Japan's colonies are relatively near, Spain has lost all her more distant colonies, and Portugal allows foreign vessels to participate in the trade of Portuguese East Africa and in that of the Portuguese possessions in Asia.

The fact that Spain and Portugal are found in this class suggests that this form of commercial policy is a survival of the objectionable practices of colonial monopoly characterizing the centuries immediately following the great discoveries.

Conclusions Concerning American-Philippine Carrying Trade

The proposal to close the Philippine-American carrying trade to foreign vessels represents the clash between the forces outlined. On the one hand are the expanding force of our exclusive coastwise shipping policy and the steady growth of our monopoly of Philippine trade. On the other hand are the tendencies on the part of world powers toward:

- (1) the policy of the open door in the carrying trade between the mother country and the colony, and
- (2) the policy of reciprocal commercial privileges in the colonial market.

The closing of the Philippine trade to foreign vessels would result in conflict with both of these policies and

ferences to products of Tunis are now again limited to those transported in French or Tunisian or Moroccan vessels. The preferences extended in 1923 to products of Morocco were also limited to products imported in French vessels; but apparently English vessels were later allowed to participate in this trade.

would place us in a position inconsistent with our past attitude in regard to colonial discrimination. In this connection it will be recalled that Mr. Adams addressed to Lord Castlereagh on September 17, 1816, a protest against the British policy of excluding American ships from the ports of the British West Indies. It is true that the situation at that time differed essentially from the present in not being concerned with shipping between the mother country and the colonies, but between an outside country (the United States) and the colonies. In fact, Mr. Adams mentioned that the United States "do not contemplate any interference, on their part, with the colonial monopoly of Great Britain."⁴¹ Nevertheless, the language of the message reflects a strong desire for equality of opportunity; "for, while British vessels, after performing a direct voyage from Europe to the United States, are there [in the United States] received upon terms of equality with those of the United States, they now enjoy the exclusive benefit of resorting to an intermediate market in the West Indies, while the vessels of the United States are restricted to the direct interchange to and from Europe. The result of which is, that British vessels enjoy in the ports of the United States important advantages, even over the vessels of the United States themselves. It must be obvious that this cannot long be tolerated; that, if the commerce with those parts of the British Dominions be not placed on a footing of reciprocity, similar restraints will become indispensable on the part of the United States."⁴²

Should Japan make use of this argument, the objection might be raised that she herself restricts to Japanese vessels her trade with Formosa. But, broadly speaking, the tendency of Japan's policy is to regard her dependencies not as colonies, but as outlying portions of the Empire,

⁴¹ *American State Papers, Foreign Relations*, Vol. 4, pp. 362, 363.

⁴² *Ibid.*

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and it was in accordance with this tendency that she applied tariff assimilation to Formosa and Sakhalin as far back as 1909. Furthermore, there is nothing to indicate that Japan has closed her Korean coastwise trade, or her Korea-Japanese trade, to foreign vessels, since the expiration in 1920 of the ten-year period of equality of treatment.

In conflict with the second policy, namely, that of exchanging commercial privileges in the Philippines and elsewhere, we compromise ourselves by furnishing foreign powers with an excuse for retaliatory measures. In as much as our trade with them is relatively small, the adverse effect of the retaliation which they might visit upon us would scarcely be offset by the small gain which would come to us through a shipping monopoly. This is illustrated in the British and Dutch control of oil fields in Persia and Mesopotamia. When we recently protested against the refusal to permit American interests to work these fields, we were reminded that in our own colony, the Philippines, we then exercised the right of complete monopoly in the oil fields there. Should England and Holland begin to monopolize their colonies as we are already monopolizing the Philippines, we would suffer more than we have gained in all our Philippine trade.

Still another objectionable feature to the proposed extension is that it might operate to impede or embarrass the application of penalty duties provided for in section 317 of the tariff act of 1922.⁴³ The fact that the proposed shipping extension would follow the passage of the tariff act of 1922, containing our declaration for equality of treatment, makes particularly objectionable the enforcement of a policy of exclusion and monopoly on the part of the United States.

⁴³ See p. 141 *et seq.*, and Appendix I.

Finally, the objections of the Filipinos themselves are of interest. Chief among their arguments appears to be the contention that the enforcement of this proposal would be injurious to Philippine trade and commerce.⁴⁴ A policy designed to stimulate colonial trade calls, by implication at least, for freedom in the choice of transportation routes and agencies rather than for restrictions on them. According to the Filipinos, the law will indirectly operate to make them pay for the maintenance of American vessels.

Again, the immediate effect of the application of the law would be to isolate Manila from other steamship lines. Hongkong and Singapore are free ports, and if Manila is to be made a distributing center, able to compete with them, it must have equal advantages.

The United States might gain some momentary benefit from the extension of the coastwise laws to the Philippines. But at the same time it is evident:

(1) That we would thereby pledge ourselves to a policy which represents an outworn, offensive, and for the most part abandoned colonial practice;

(2) That we would thereby weaken our protests against discrimination elsewhere; and

(3) That we would thereby adopt a policy inconsistent with our past declarations and contrary to our traditions.

Policies of Discrimination and Exclusion Do Not Pay

Opposition to mercantilist policies of discrimination stated in this chapter has led champions of exclusive nationalistic marine policies to charge this author with indifference to the prosperity of the American merchant marine.⁴⁵ The situation is not new. It arose at the time of the Panama Canal controversy⁴⁶ and is certain to occur

⁴⁴ *New York Times*, August 25, 1920.

⁴⁵ The author has been called upon to meet such charges. See Appendix VI.

⁴⁶ See Appendix VII.

again so long as minorities seek to use the machinery of government to increase their profits and to create for themselves monopoly rights. The practical objection to the policies which have been considered in this chapter is that they are not profitable to the nation in the long run; sometimes they do not yield desirable results even to the interests intended to be directly benefited. Our protective tariff can be justified by its results; the nation's life has been diversified and new industries developed offering varied opportunities for the enterprise of man. But preferential rates on shipping can at best protect only the inbound trade and they invite retaliation. The same weakness is inherent in the policy of colonial monopoly.

Government Aid Already Enjoyed by the American Merchant Marine

An industrial nation should develop a merchant marine. The United States Government under its shipping laws is aiding American shipping substantially. Through the Post Office Department it pays to non-contract American vessels 80 cents a pound for the carriage of letters and post cards and 8 cents a pound for other articles, whereas for the same service it pays foreign vessels, under the Universal Postal Union rates, 4 francs per kilo (about 35 cents per pound) for letters and post cards and 50 centimes per kilo (about 4.5 cents per pound) for other articles. Since foreign vessels are ready and willing to carry the mails at the Universal Postal Union rates, it is seen that the Government is aiding American vessels by giving the postal business to them.

The Merchant Marine Act of 1920, provides for the setting aside of \$25,000,000 a year for five years as a fund for aiding private American citizens in the construc-

tion of the best types of steamers. For about two years after the passage of the act no funds were available from the sources designated by the act to inaugurate such a fund, but by 1924 over \$50,000,000 was made available. Several loans for ship construction were made, and numerous applications for assistance from the fund were considered by the Shipping Board.

On June 6, 1924, a law was approved authorizing the Shipping Board to expend up to \$25,000,000 from the Construction Loan fund for the installation of Diesel engines in existing vessels. A committee of experts has been appointed by Admiral Benson of the Shipping Board to advise the Board on questions of Diesel conversions, and steps are being taken to equip a number of Shipping Board vessels with these engines. The law provides that vessels so reconditioned shall be sold to private individuals, contracts of sale having been signed before the expenditure of any public funds on the vessels, or as an alternative, that the Board itself be prepared to put such vessels in operation immediately upon completion.

Other Aids

Further aids to the merchant marine might well include, in the first place, lower interest rates on construction loans. The law authorizing the Construction Loan fund now provides that the rate of interest to be charged by the Government shall be $4\frac{1}{2}$ per cent if the vessel is engaged wholly in foreign trade, or $5\frac{1}{2}$ per cent if such vessel turns to the coasting trade. This rate could well be reduced below the commercial rate. A return of even 2 per cent would be an adequate charge on loans made to induce construction for foreign trade purposes. In the second place, revision, amendment, and codification of navigation laws are called for. A comprehensive study should be made, by some competent committee, of the United States naviga-

tion laws, with a view to proper amendment and codification. The laws in their present condition are almost useless, many of them being obsolete and liable to misinterpretation.

In the third place, an educational program should be inaugurated. A detailed analysis of steamship services, such as was made by the Shipping Board and the President's special committee on merchant marine questions, discloses the existence of weaknesses in the marine situation. If a certain region is shown to be oversupplied with or lacking in services, deficient in sailings under American flag, unprofitable, or in need of special types of vessels, it will be possible to suggest remedies service by service, but it may require a long campaign of education to attain the desired results.

A merchant marine cannot be created to-day by government aid any more than it could in the days of the old merchant marine. But it can be created by such industry and genius as created the marine of our early history. Daniel Webster, speaking in the House of Representatives in 1824, said:⁴⁷

Not, sir, by protection and bounties, but by unwearied exertion, by extreme economy, by unshaken perseverance, by that manly and resolute spirit which relies on itself to protect itself. These causes alone enable American ships still to keep their element, and show the flag of their country in distant seas.

Noting these same characteristics of American ships and seamen, De Tocqueville wrote in 1835:⁴⁸

. . . The ships of the United States fill the docks of Havre and Liverpool, whilst the number of English and French vessels

⁴⁷ Sec Taftsig, F. W., *State Papers and Speeches on the Tariff*, p. 330.

⁴⁸ Garrett, Garet: "The Nonexistent Merchant Marine," *Saturday Evening Post*, Feb. 2, 1924.

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at New York is comparatively small. I am of the opinion that the true cause of their superiority must be sought for not in physical advantages, but that it is wholly attributable to moral and intellectual qualities. The European sailor navigates with prudence; he sets sail only when the weather is favorable; if an accident befalls him, he puts into port; at night he furls a portion of his canvas, and when the whitening billows intimate the vicinity of land he checks his course and takes an observation of the sun. The American neglects these precautions and braves these dangers. He weights anchor before the tempest is over; by night and by day he spreads his sails to the wind; and he repairs as he goes along such damage as his vessel may have suffered from the storm; and when at last he approaches the term of his voyage he darts onward to the shore as if he already desried a port. The Americans are often shipwrecked, but no trader crosses the sea so rapidly. And as they perform the same distance in a shorter time, they can perform it at a cheaper rate. I can not better explain my meaning than by saying that the Americans show a sort of heroism in their manner of trading.

With this spirit of enterprise characterizing the leadership of our shipping interests the government may fairly consider what further aids may be extended them to meet the nationalistic competition of the modern world. Perhaps it is not a misfortune that the nation is trying out the experiment of government ownership and operation of ships. The system certainly cannot be said to have failed and may yet prove of special value in providing a needed training school for the new merchant marine. But the experience already gained lends strong support to the opinion that the shipping problem will not be solved until our shipping is either all privately or publicly owned. Public and private ownership do not operate satisfactorily side by side.

In the case of a privately owned and operated merchant marine some government aid may be necessary, recognizing that shipping to-day is distinctly a national enterprise. The interest of a nation in its ships is manifest at every

turn. They are auxiliaries in war and an impetus to prosperity in peace. Bounties or subsidies may even be justified on the ground that they tend to equalize the difference in costs of building and operation between the United States and other shipping nations, but at best they can only help; they cannot make a merchant marine. Private initiative, the love of accomplishment, and a ship-mindedness among the leaders of the marine—these rather than government favors will give back to America its prestige on the sea. The Honorable E. L. Davis said to the Committee on Foreign Relations in 1924:⁴⁹

... we should remove the causes which hamper our shipping, eliminate the unnecessary cost and waste, and then rely upon the intelligence, genius, skill, and efficiency which characterize Americans and which enable them to maintain supremacy in practically every other line of endeavor.

International Character of Shipping

Ships are in a peculiar sense an expression of nationalism, and if a nation is to continue to emphasize its antagonisms and not its common interests with other nations, it is wise policy for it to perfect its merchant marine and get control of as many points of advantage on sea routes as it can. If the game of international world politics is to be guided by opportunism; if nations that happen to be strong are to use their strength to play the part of Shylock in international relations, the duty of the United States is clear. But shipping must be regarded as essentially an international enterprise. That under the stress of war nations recognize this is instanced by the

⁴⁹ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany,"* March 7 and 11, 1924, pt. 6, p. 227. Representative Davis showed intimate familiarity with the costs of shipping, and his analysis showing the comparative unimportance of the higher cost of operating American ships deserves a wide circulation.

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creation during the World War of the Inter-Allied Maritime Transport Council. The tendency is toward international control of great waterways and canals. World peace demands that gradually the status of an international public utility be given to coal and oil stations on the great highways and that even shipping itself submit to international supervision which will guarantee security in transportation to every nation.

CHAPTER XIII

THE FOREGROUND OF THE MODERN WORLD

The Archbishop. Do not think that I am a lover of crooked ways. There is a new spirit rising in men: we are at the dawning of a wider epoch. If I were a simple monk, and had not to rule men, I should seek peace for my spirit with Aristotle and Pythagoras rather than with the saints and their miracles.

La Trémouille. And who the deuce was Pythagoras?

The Archbishop. A sage who held that the earth is round, and that it moves round the sun.

La Trémouille. What an utter fool! Couldn't he use his eyes.

—BERNARD SHAW: "SAINT JOAN"

Protest against the Individualistic Creed

A faith in free competition, free contract, and free trade was bequeathed to the people of the nineteenth century. It became the comforting belief of the strong manufacturing and trading classes, first in Great Britain and later in other industrialized countries, who flattered themselves by the thought that the achievement of their selfish purposes coincided with the good of society, and who found that it furnished convenient arguments to justify their industrial methods and their objections to government interference. The first effect on the ordering of human affairs of this return to the individualistic creed had undoubtedly been wholesome. By breaking down restrictions no longer serving a useful purpose, it had cleared away hindrances to the material progress of the century and had released undreamed-of potentialities of human thought and action. But in this, as in many other movements the pendulum

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swung too far. Individualism as a slogan of reform developed weaknesses as an affirmative program. Almost before the factory system had established itself, hard facts upset the complacency with which the *laissez faire* dogmas had been contemplated. Unrestrained freedom of contract resulted in the shameful exploitation of the weak unorganized laborers, entailing special hardships upon women and children. Bargaining between individuals of equal economic strength might have produced social harmony, but between persons of unequal economic strength exploitation was the inevitable result.

Protests against these conditions and the individualistic theories by which it was attempted to justify them came during the ensuing years from men as widely different as Thomas Carlyle and Karl Marx. Criticisms and constructive suggestions also came from communists like Robert Owen, St. Simon, and Fourier, the Christian Socialists among whom Frederick D. Maurice and Charles Kingsley were conspicuous, Ferdinand Lassalle, founder of the Socialist party in Germany, John Ruskin, Elizabeth Browning, and even John Stuart Mill in his later years, together with a host of critics, some mild, others radical, of the existing industrial and social order. Some advocated a reform of the system; others preached revolution. Marx and Lassalle created a social philosophy, which regards society neither as made up of competing nations as did mercantilism nor of competing individuals as was contended by the classical economists, but of competing economic classes. "The history of all hitherto existing society," begins Marx's Communist Manifesto, "is the history of class struggle." He and other writers expected that the working class or proletariat would inevitably replace the bourgeois class in economic control. But these publicists have had no monopoly in ameliorative endeavor, for many persons to whom Marxian socialism is

unacceptable have contributed by their influence and efforts to the removal of the abuses which grew up in the wake of the material advance of the last century. Practical business men in the United States, realizing that failure on their part to assume the responsibility of developing ethical standards in production and distribution would lead to the government attempting the task, are developing programs of industrial self-government.¹ Moreover, the *laissez faire* policy in government has been abandoned, and there is a growing body of legislation limiting property rights in the interests of life, liberty, and the pursuit of happiness of all classes in the community and tending to associate private property with effective social service.

A New Mercantilist Statecraft

As in domestic so in international affairs the *laissez faire* doctrine has played its part. Its early apostles hoped that free trade among nations might be accompanied by cosmopolitan sentiment and by world peace. The application of the system to practical affairs, on the other hand, was mixed with less altruistic motives. The same classes which had found this doctrine to coincide with their domestic economic interests found the free-trade system conducive to the extension of their interests abroad. The free-trade movement, completely successful in Great Britain, contributed to moderation in the tariff schedules of other countries, but it was checked by the growth of industrialism and the resulting competition. By the eighties of the

¹Address of Wilson Compton before the annual meeting of the National Industrial Conference Board, New York, May 15, 1924, on *The Activities of American Trade Association*. Address of Herbert Hoover before annual meeting of the Chamber of Commerce of the United States, May 7, 1924, Cleveland: *Some Phases of the Government in Business*. Twelfth annual report of Secretary of Commerce for year ended June 30, 1924, pp. 10, 22-24; see also White, William Allen: *Politics, The Citizens' Business*, 1924.

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last century, other nations were found disputing British economic ascendancy. The world then witnessed an alliance between business and the state, the support of national governments supplementing the unregulated freedom of the individual in international trade. Restraints on the individual, such as the state had begun to enforce in domestic competition, were not only omitted from the control of international trade, but the state became, in a greater or less degree, a partner with its nationals in making their competition effective against other national groups. Unrestrained individualism and an aggressive mercantilist policy joined hands with the certainty that collision between national interests in the markets of the world would ensue.

The course leading to this result was not without excuse. It was logical that if and when commerce and finance crossed national boundaries and found no or only ineffective international government, national governments should be asked to undertake the task of supplying the deficiency for each national group involved, even though the old diplomacy, supported by force, be resorted to for the purpose of building up a system for dealing with the relations between states.

But, more particularly during the last fifty years, indications began to appear that too great emphasis on nationalistic measures, backed by armament and war, would defeat their own purpose. There arose the anomaly of national governments, presumably adequate to exercise control within their territorial jurisdictions, attempting to govern in jurisdictions for which they were never designed. Western nations were fast becoming the victims of a system beginning to extend beyond the control of existing institutions. National governments, instead of devising social controls for the forces let loose by trade and finance, accentuated the fierceness of international economic com-

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petition. Although they negotiated treaties, formed alliances, and held conferences for the settlement of some of their differences, they went on equipping armies and building navies and devising methods by which to reduce killing and destruction to an exact science. And why? Because their armaments were vitally related to policies that must be defended at any cost. It seemed idle to talk of disarmament until nations set bounds to their rivalries and had agreed to rules and machinery for that international coöperation which they had in view.

It has been a purpose of this volume to consider the disputes and grounds for disputes which have arisen among nations from economic causes. The last century records an unprecedented advance in the natural sciences and in the efficiency and organization of production, transportation, and communication. But in methods of government and social control the western world has not kept pace with its material progress. Ancient and medieval peoples, it may be argued, had a more effective control over their life, such as it was, than is the case in the modern world. However that may be, the war and post-war experiences through which the world is passing should alone be sufficient to prove the inadequacy of the institutions by which the world now tries to control its common life. The first great danger to nationalism is the tendency of nations to clash when their interests diverge. If the nation is to be preserved as a unit of world society, means of coöperation upon essentially international issues must be devised. The nation as a governing force is useful only up to a certain point—beyond that point its control begins to break down. Abiding national security will depend upon recognizing the existence of certain things which national power cannot accomplish and acknowledging that the nation and all that it represents in modern society can be saved only by coöperation between itself

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and others in the solution of problems with which they are confronted.

Ebb-Tide from Non-European Peoples

Economic expansion, leading as it has to serious rivalries and misunderstandings among nations which have developed the capitalistic system of production and distribution, has created among the non-white races, particularly the peoples of Asia, a second danger. In recent centuries these people have been brought under a greater or less degree of dependency upon western nations, and particularly in the latter part of the nineteenth century the penetration of their territories by the economic organization of the West has been of far-reaching import. Western nations have imposed their authority upon them in degrees varying from complete colonial control to the establishment of spheres of influence and the exacting of treaties establishing extraterritorial jurisdiction and fixing the maximum limit of tariffs. Now, however, that the nations of Asia and Northern Africa have become more conscious of their power, they are asserting their right to independent action and adopting defensive measures. Their resentment is not only against laws and regulations restricting the migration of Asiatics but against occidental commercial and financial methods and even occidental ideas. They by no means admit the superiority of our civilization over theirs, nor are they anxious to follow the methods of the West. The more thoughtful of them resent our materialistic philosophy, our standardized existence, and our very concepts of civilization.

Nevertheless, the industrialization of the East under the leadership of the West goes forward. Western capital and commerce are introducing capitalistic methods into eastern countries. Great quantities of machinery—textile, electrical, and otherwise—are being exported to Asia.

Japan has taken over completely the business methods and the material structure of western economic life. In India the cotton manufacturing industry has been gradually forcing Lancashire to shift its markets.

In the next few decades the forces in Asia now at times operating at cross-purposes and without direction may converge. These forces include the overwhelming man power of Asiatic countries, the growing consciousness of nationality and unity among Asiatic peoples, and the adoption of the material methods and concepts of western civilization. What may happen if these forces do converge and Asia as a whole adopts, as Japan has done, the imperialistic methods of the West?

The Nation: Political Self-Government

Even the most confirmed cynic cannot accept as satisfactory a world situation which permits the free play of forces tending at one time to set nation against nation in the West, and at another to stir the East in revolt against the West. The optimist at least will believe that somewhere among the peoples of the East and the West there is sufficient constructive genius to devise institutions which will dispense justice and establish peace among the nations.

Any discussion of international organization which may be regarded as practical should recognize the nation as the unit of world society, but programs for peace too often disregard this essential. The organization of man's life on a national and territorial basis has proved beneficial in conserving the political, economic, and social heritage, held dear by any group of people. No return to theocracy or to feudalism is feasible, and other forms of government, *e.g.*, by classes, is not to be contemplated.

Nations have developed systems of laws and methods of government adapted to their respective needs. Uniformity in these matters is neither possible nor desirable. Political

forms and procedure conferring happiness upon people of our temperament and traditions might bring social disintegration to others. Anglo-Saxon countries have developed guaranties of personal liberty and representative government which their people regard as the privileges of free institutions, but it is far from self-evident that other peoples, especially Orientals, will develop along similar lines. The nation, therefore, is the agency by which a people may preserve its peculiar political heritage.

It may be added that this heritage may properly be defended from attack without and should be preserved from abuse within. Americans are not passing judgment on the government of other lands in taking just pride in their own progress. "We here in America," Roosevelt said in 1912², "hold in our hands the hope of the world, the fate of the coming years; and shame and disgrace will be ours if in our eyes the light of high resolve is dimmed, if we trail in the dust the golden hopes of men. If on this new continent we merely build another country of great but unjustly divided material prosperity, we shall have done nothing; and we shall do as little if we merely set the greed of envy against the greed of arrogance, and thereby destroy the material well-being of all of us. To turn this Government either into government by a plutocracy or government by a mob would be to repeat on a larger scale the lamentable failures of the world that is dead."

From what has been said it follows that one people has as much right to national autonomy as another. While the mandate principle may be regarded as a necessary practical measure at certain stages of a people's development, it must not be forgotten that it is but a prelude to self-government. In some quarters it has been naïvely assumed that Anglo-Saxon people alone are able to govern.

² Roosevelt, Theodore, *The Right of the People to Rule*, March 20, 1912, Sen. Doc. No. 473.

Some have professed an inability to understand why non-European peoples should prefer inefficient self-government to efficient government by Europeans. In the colonial question, however, the right of self-government is paramount even to efficiency in administration. In the process of evolution the transition will not be from efficient government by the mother country to efficient government by the colony, but rather from efficient government by the mother country to inefficient government by the colony; and then perhaps to still more inefficient government by the colony before the start to better government sets in. Unless great portions of the earth are to continue permanently in the status of dependency this process of evolution must go on, and what colonial peoples have to realize is that time and experience are required to develop the habit of government. The traditions of working together politically develop slowly in any people. Honesty in the officials who are trustees for the people is an ideal only slowly and imperfectly realized even among Anglo-Saxons.

The Nation: Economic Self-Government

Analogous to the nation's function in conserving the political institutions of a people is its service in preserving economic standards and directing economic development. Here, also, the mandate principle is justified as a practical aid in developing the economic resources of areas whose people have neither the capital nor the skill to develop them for themselves. While the rights of the inhabitants should be recognized, large areas of the earth should not be permitted to remain outside of the world's economic development merely because their inhabitants are themselves unable to develop them.

Where a people has developed or taken over an advanced social and political organization and is conscious of its national entity, it alone is competent to judge what is

desirable in its economic life. This principle applies not only to young nations, such as the self-governing Dominions of the British Empire, but also the rising nations of Asia. Even if it were possible, complete economic independence for every nation may not be desirable, and when international security shall have been established that degree of independence may not be sought in all cases. If, however, one nation chooses free trade and another protection, other peoples should not object to this assertion of their undoubted right to determine the nature and direction of their economic progress. Alexander Hamilton's *Report on Manufactures to the Congress of the United States* may bear a new meaning when read in the light of conditions prevailing in countries such as Australia and India. Protective tariffs—an expression of nationalism—in the self-governing Dominions have tended to decentralize the industries of the British Empire. The assertion of economic and political independence in Japan, India, and Persia affords further examples of this check of nationality upon modern imperialism. Hamilton's great report was not only a protest against the old colonialism of England, and a criticism of the free-trade views of Adam Smith, but also an answer which young countries now may give, as they did in 1791, to the older industrialized states attempting to force upon them free trade or to impose limitations upon their tariff legislation. Such passages as the following from Hamilton's report are as applicable to rising nations to-day as they were to the young American nation:³

To cherish and stimulate the activity of the human mind by multiplying the objects of enterprise is not among the least considerable of the expedients by which the wealth of a nation may be promoted. Even things in themselves not positively advan-

³ Taussig, F. W., *State Papers and Speeches on the Tariff*, Cambridge, Harvard University, 1893, pp. 21, 22.

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tageous sometimes become so by their tendency to provoke exertion. Every new scene which is opened to the busy nature of man to rouse and exert itself is the addition of a new energy to the general stock of effort.

The spirit of enterprise, useful and prolific as it is, must necessarily be contracted or expanded in proportion to the simplicity or variety of the occupations and productions which are to be found in a society. It must be less in a nation of mere cultivators than in a nation of cultivators and merchants, less in a nation of cultivators and merchants than in a nation of cultivators, artificers and merchants.

The Nation: Social and Cultural Unity

Not only is it the function of the nation to carry out the political and economic desires of its people, but it has become the center around which have gathered the finest expressions of the civilization of the world. The nation finds its richest development in systems of law, in language, literature, social and historical tradition, and all that may be summed up in the word culture. While this aspect of nationality has in some degree been brought into disrepute by its association with a belligerent and combative attitude among states, it must be conceded that under present haphazard methods of international relations the nation has the duty as well as the right to protect its institutions against disintegration from within and attacks from without. On this principle the right to regulate immigration is grounded. An indiscriminate mixing, on any large scale, of people having different economic, social, and racial standards is no solution of the problem of overpopulation in the country whence come the immigrants and creates destructive tendencies in the more highly organized societies to which they may go. Thus immigration restrictions, far from being inimical to the principle of national conservation and unity, are further evidence of its soundness.

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The element of diversity in cultural development is desirable not only because it meets the many needs of peoples having different traditions and in varying stages of progress, but because it offers a maximum degree of opportunity for social experiment and thereby contributes to the general stock of knowledge. The right of a nation, however, to determine the character of its population does not imply that peoples excluded in the process are in any sense inferior. Neither does it warrant discriminations against members of a race who, often through no fault of their own, find themselves in a hostile country. Problems of population and of racial misunderstandings cannot be settled by force, but should be approached in a spirit of conciliation and with a full realization of their import to the peace of the world.

The Nation as an Agent for International Coöperation

The nation is not only useful as a means of conserving the political, economic, and social interests of the many diverse types of modern civilization, but it may prove an effective instrument of coöperation in international relations. World government in the sense of direct representation in a common parliament is not at present among the possibilities of practical statesmanship. It is not at all convincing to cite as an argument in this connection the failure of the Articles of Confederation and the success of the Federal Constitution. The thirteen original states of the United States had sufficient interests in common to unite them under a common national government. Where, on the other hand, interests diverge, it is desirable and necessary to bring about coöperation among national units.

Nations can accomplish much toward extending the application of the law to international relations (a) by

domestic legislation,⁴ (b) by applying the principles of international law in their domestic courts,⁵ and (c) by negotiating bilateral treaties with other states. Much constructive legislation can be accomplished by these methods especially during the formative period of international government.

The Road to National Safety

No nation should deceive itself, however, in thinking that these methods are sufficient. When a nation endeavors to take direct action beyond these recognized devices, it attempts the rôle of a governing agency in a jurisdiction for which it was never designed, and to the solution of whose problems it is wholly unfitted. Self-destructive tendencies have, as has been already emphasized, developed in the system of national states, and even ardent devotees of nationalistic ideals realize the necessity of supplementing national governments with an international organization or organizations. For the sake of its own preservation and security nationalism must recognize its limitations.

A new diplomacy, now being developed, not only recognizes the permanent importance of economic factors in world affairs, but relies less and less upon force and more and more upon good will and understanding. A new point of view and another objective in international relations are being advocated by believers in nationality, who object, however, to its abuse in promoting the selfish aims of small classes of the population, or in promoting those aims of the state as a whole which may give an appearance of immediate success but which in the long run must meet such resistance from other states as to lead to disaster. The logic of the arguments presented in this volume leads

⁴See Chap. iv and Appendix I.

⁵See Appendix IX, Note 3.

irresistibly, it is believed, to the conclusion that if civilization is to be preserved and the destructive tendencies of our material existence arrested, adequate institutions must be developed for the regulation of international relations.

In Appendix IX, the elements of international government are discussed in a program believed to be the practical means by which the United States may contribute at the present time to the settlement of international disputes. The particular means by which the peoples of the world, however, are to institutionalize⁶ their will to peace is of secondary importance. The League of Nations at Geneva is a most hopeful effort. Whether it be this particular League, some modification of it, or some other means, the ultimate organization of world government must provide for (1) a process whereby substantive international law is regularly and adequately enacted; (2) machinery for its administration; and (3) a court to construe and interpret it. In earlier chapters of this volume dealing with colonial questions, raw materials and energy resources, loans and investment, foreign trade, and shipping, an effort has been made to distinguish between the responsibilities which rest on national governments acting alone or bargaining two by two and those which must be met by nations coöperating in an international organization. If we desire peace through orderly institutions, the objective should be to develop gradually a code of international law to govern in economic relations and the administrative and legal machinery for its enforcement. Government in international affairs need not be developed by political groups alone, but, in definite fields, by business and philanthropic organizations. The International Chamber of Commerce is not the least important of the agencies which to-day are aiding in the settlement of disputes among peoples of dif-

⁶ Cf. White, William Allen, *Woodrow Wilson: The Man, His Times and His Task*, 1924, p. 486.

ferent nations. The great Christian organizations of the world may also contribute. In fact, institutions for international coöperation will not ultimately evolve along lines deemed by any one people orthodox, but will proceed from all classes and races and will synthesize the thought and faith of each nation, East and West, operating to direct the control of economic and political factors in our common world life. War is not an end in itself, nor even a necessary evil, but it is often approved and supported because men have not the courage or constructive genius to give outward expression to their longings for peace. Unless man consciously sets about seeking security and justice in international affairs, as he has done in domestic affairs, war will either destroy him or force him to seek refuge in a world empire.

If the advocacy of international government be deemed utopian, the answer is that dreams are preferable to despair, which denies that nations can ever settle their differences without war. Not sentimentality and ungrounded speculation have brought this volume to its close with a note of hope, but rather an analysis of the hard facts. Surely we may assume mankind equal to any task, however complex. Our institutions will not in the future, any more than they have in the past, be created in a day. The Anglo-Saxon and Roman systems of law were evolved through centuries. The forms and principles of our constitutional government are the heritage of generations of English and American people. The development of international government may be more difficult than that of national government because peoples will differ upon how their desires shall be expressed, but even if a hundred years are required to institutionalize the longings of men for peace, the achievement will not be slower in accomplishment than other great advances in human progress. This generation can best make effective its will to peace by

keeping its feet on the ground of hard facts and its eyes on the stars of desire.

No age fully lives up to its ideals, and such ideals are translated into realities only by conscious effort. Existing tendencies in a society are reduced to institutions only under the leadership of a Bentham or a Hamilton or a Wilson. Men to-day may send up a desperate cry for peace, but there will be no peace as long as the seeds of war are allowed to germinate and people are so misguided as to seek security in an exclusive provincialism. Every age must rediscover the basic principles of social cooperation and apply them to the particular needs and conditions of its own time.

APPENDIX I

SECTION 317 OF THE TARIFF ACT OF 1922

DISCRIMINATIONS BY FOREIGN COUNTRIES AGAINST COMMERCE OF THE UNITED STATES

(a) New or Additional Duties for Discriminations

That the President when he finds that the public interest will be served thereby shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of any foreign country whenever he shall find as a fact that such country—

Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country;

Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) Exclusion from Importation

If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has,

after the issuance of a proclamation as authorized in sub-division (a) of this section, maintained or increased it said discriminations against the commerce of the United States, the President is hereby authorized, if he deem it consistent with the interests of the United States, to issue a further proclamation directing that such articles of said country as he shall deem the public interests may require shall be excluded from importation into the United States.

(c) Application to All or Part of Country: Modification of Proclamation

That any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) New or Additional Duties to Offset Burdens upon Commerce: Exclusion from Importation

Whenever the President shall find as a fact that any foreign country places any burdens upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burdens, not to exceed 50 per centum ad valorem or its equivalent, and on and after thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country

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such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) Duties to Offset Benefits to Third Country

Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) Forfeiture of Articles

All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall

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be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this Act shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) Duties of Tariff Commission

It shall be the duty of the United States Tariff Commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) Secretary of the Treasury to Make Rules

The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) Definition of "Foreign Country"

That when used in this section the term "foreign country" shall mean any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

APPENDIX II

BRITISH IMPERIAL PREFERENCE IN PUBLIC CONTRACTS

Preferences, it is stated, are given by local governing bodies in New Zealand in considering tenders for important public works by British concerns. Offers of non-British companies are not accepted even though their bids are lower than those received from British concerns.¹ Substantial preferences to British trade are also granted in South Africa through colonial and municipal official purchasing agencies. As an illustration of this practice, Cape Colony in 1907 paid a premium of \$625,000 to enable British manufacturers to obtain an order for \$7,500,000 of railway rolling stock which otherwise would have gone to a foreign country. In this case the purchasing agent had instructions to allow British manufacturers an advantage in their bids of 10 per cent. In 1917 the Durban (Natal) Municipal Corporation authorized the municipal storekeeper to give preference up to 10 per cent to goods produced and manufactured in the United Kingdom as against goods which may be procurable from the United States. Concerning this preference, the British and South African Export Gazette for March, 1917 (British), says: "In any event manufacturers are assured after the war of the substantial preference indicated above, which should place them in an exceedingly favorable position with competing countries."

¹ Scholefield, G. J.: *New Zealand in Evolution*, p. 323. See also U. S. Tariff Commission: *Colonial Tariff Policies*, pp. 751 and 773.

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At the Imperial Economic Conference which met at London in 1923 the following resolution was adopted: ²

1. That this Imperial Economic Conference re-affirms the principle that in all Government contracts effective Preference be given to goods made and materials produced within the Empire except where undertakings entered into prior to this Conference preclude such a course or special circumstances render it undesirable or unnecessary.

2. That so far as practicable, efforts be made to ensure that the materials used in carrying out contracts be of Empire production.

3. That State, provincial and local government authorities should be encouraged to take note of the foregoing resolutions

²Imperial Economic Conference of Representatives of Great Britain, The Dominions, India, and the Colonies and Protectorates held in October and November, 1923. *Record of Proceedings and Documents*, Cmd. 2009, London, 1924, p. 14.

APPENDIX III

FLOTATION OF FOREIGN LOANS

The following is a statement dated March 3, 1922, of the Department of State, on the flotation of foreign loans:

The flotation of foreign bond issues in the American market is assuming an increasing importance and on account of the bearing of such operations upon the proper conduct of affairs, it is hoped that American concerns that contemplate making foreign loans will inform the Department of State in due time of the essential facts and of subsequent developments of importance. Responsible American bankers will be competent to determine what information they should furnish and when it should be supplied.

American concerns that wish to ascertain the attitude of the Department regarding any projected loan should request the Secretary of State, in writing, for an expression of the Department's views. The Department will then give the matter consideration and, in the light of the information in its possession, endeavor to say whether objection to the loan in question does or does not exist, but it should be carefully noted that the absence of a statement from the Department, even though the Department may have been fully informed, does not indicate either acquiescence or objection. The Department will reply as promptly as possible to such inquiries.

The Department of State can not, of course, require American bankers to consult it. It will not pass upon the merits of foreign loans as business propositions, nor assume any responsibility whatever in connection with loan transactions. Offers for foreign loans should not, therefore, state or imply that they are contingent upon an expression from the Department of State regarding them, nor should any prospectus or contract refer to the attitude of this Government. The Department believes that in view of the possible national interests involved it should have the opportunity of saying to the underwriters concerned, should it appear advisable to do so, that there is or is not objection to any particular issue.

APPENDIX IV

PRINCIPLES OF BUSINESS CONDUCT

The following resolution was passed at the Twelfth Annual Meeting of the Chamber of Commerce of the United States at Cleveland, Ohio, May 8th, 1924:

The function of business is to provide for the material needs of mankind, and to increase the wealth of the world and the value and happiness of life. In order to perform its function it must offer a sufficient opportunity for gain to compensate individuals who assume its risks, but the motives which lead individuals to engage in business are not to be confused with the function of business itself. When business enterprise is successfully carried on with constant and efficient endeavor to reduce the cost of production and distribution, to improve the quality of its products, and to give fair treatment to customers, capital, management, and labor, it renders public service of the highest value.

We believe the expression of principles drawn from these fundamental truths will furnish practical guides for the conduct of business as a whole and for each individual enterprise.

I.

The Foundation of business is confidence, which springs from integrity, fair dealing, efficient service, and mutual benefit.

II.

The Reward of business for service rendered is a fair profit plus a safe reserve, commensurate with risks involved and foresight exercised.

III.

Equitable Consideration is due in business alike to capital, management, employees, and the public.

IV.

Knowledge—thorough and specific—and unceasing study of the facts and forces affecting a business enterprise are essential to a lasting individual success and to efficient service to the public.

V.

Permanency and continuity of service are basic aims of business, that knowledge gained may be fully utilized, confidence established and efficiency increased.

VI.

Obligations to itself and society prompt business unceasingly to strive toward continuity of operation, bettering conditions of employment, and increasing the efficiency and opportunities of individual employees.

VII.

Contracts and undertakings, written or oral, are to be performed in letter and in spirit. Changed conditions do not justify their cancellation without mutual consent.

VIII.

Representation of goods and services should be truthfully made and scrupulously fulfilled.

IX.

Waste in any form—of capital, labor, services, materials, or natural resources—is intolerable and constant effort will be made toward its elimination.

X.

Excesses of every nature—inflation of credit, over-expansion, over-buying, over-stimulation of sales—which create artificial conditions and produce crises and depressions are condemned.

XI.

Unfair Competition, embracing all acts characterized by bad faith, deception, fraud, or oppression, including commercial bribery, is wasteful, despicable, and a public wrong. Business will rely for its success on the excellence of its own service.

XII.

Controversies will, where possible, be adjusted by voluntary agreement or impartial arbitration.

XIII.

Corporate forms do not absolve from or alter the moral obligations of individuals. Responsibilities will be as courageously and conscientiously discharged by those acting in representative capacities as when acting for themselves.

XIV.

Lawful coöperation among business men and in useful business organizations in support of these principles of business conduct is commended.

XV.

Business should render restrictive legislation unnecessary through so conducting itself as to deserve and inspire public confidence.

APPENDIX V

CONTROVERSY BETWEEN UNITED STATES AND ENGLAND OVER THE TRADE OF THE WEST INDIES, 1815-1830.

The commercial convention of 1815 between the United States and Great Britain left unchanged the regulations concerning the intercourse between the United States and the British colonies in North America and in the West Indies. For years before this convention was signed the wars between Great Britain and France had made it inexpedient as well as impossible for the former to enforce rigidly in the colonies her navigation laws, but immediately after that convention became effective Great Britain revived her old colonial policy of exclusion and shut American vessels out of these colonies. In retaliation Congress passed an act in 1817 imposing a duty of \$2 per ton upon foreign vessels entering an American port from a foreign port in which American vessels were not ordinarily permitted to enter and trade,¹ and enacted the Navigation Acts of April 18, 1818, and May 15, 1820. The former act provided that the ports of the United States should be closed against British vessels coming from any port or place in a British colony or territory which was closed against vessels of the United States. It also provided that every British vessel laden in an American port with American goods for exportation should "give bond, in a sum double the value of such articles, . . . that the article or articles so laden on board such vessel for exportation, shall be landed in some port or place other than a port or

¹ 3 Stat., 344.

place in a colony or territory of his Britannic majesty which by the ordinary laws of navigation and trade, is closed against vessels owned by citizens of the United States. . . ."²

The Act of 1820,³ which was supplementary to the act of 1818, interdicted, entirely, the trade in British vessels of the British possessions in North America and in the West Indies with the United States, and restricted imports from these places to their own produce. Other nations also were retaliating, or threatening retaliation, against the British policy of exclusion. In the face of this opposition Great Britain thereupon partially relaxed her restrictions against the vessels of foreign nations, but she did not remove the discriminating duties of impost and tonnage against American vessels.⁴ The United States was not satisfied with this partial removal of restrictions, and in opening its ports to British vessels coming from these British colonies, imposed exactly corresponding conditions as it was possible to determine. The Act of March 1, 1823, authorized the President to grant vessels from the "enumerated British colonial ports" national treatment upon "proof" that American vessels were receiving national treatment in those colonial ports.⁵

² 3 Stat., 432.

³ 3 Stat., 602.

⁴ This is the one instance in which Great Britain was compelled by the retaliatory measures of the United States to remove restrictions against American shipping. But in removing these restrictions her action was not dictated wholly by the retaliatory measures of the United States, as other foreign nations also had adopted, or threatened to adopt, similar measures against British shipping.

⁵ Act of March 1, 1823 (3 Stat., 740) provides:

"Sec. 3. . . . That, on proof being given to the President of the United States, satisfactory to him, that, upon the vessels of the United States admitted into the above enumerated British colonial ports, and upon any goods, wares, or merchandise, imported therein, in the said vessels, no other or higher duties of tonnage or impost, and no other charges of any kind, are levied or exacted than upon

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Following the passage of the above act there ensued a correspondence covering a period of about three years between the two governments over the "proof" that would be necessary to satisfy the United States and over the words "from elsewhere" contained in the above clause. The term "from elsewhere" was interpreted by the United States "to be of meaning equivalent to *everywhere else*, and, of course, to include . . . his Majesty's dominions themselves. . . ." ⁶ The British Government considered the claim that the United States should be permitted to trade with the British colonies on the same terms as Great Britain herself totally inadmissible, and by an act of Parliament of July, 1825, established new conditions under which foreign countries might trade with these colonies, accompanied with a threat to interdict the trade of any nation which refused to accept the conditions stipulated in the act. The United States refused to accept these conditions, and Great Britain by Order-in-Council, in July, 1826, excluded American vessels from the above-mentioned colonial ports. The United States revived its

British vessels, or upon the like goods, wares, and merchandise, imported into the said colonial ports from elsewhere, it shall and may be lawful for the President of the United States to issue his proclamation, declaring that no other or higher duty of impost or tonnage and no other or higher duty or charge of any kind, upon any goods, wares or merchandise, imported from the above enumerated British colonial ports, in British vessels, shall be levied or exacted in any of the ports of the United States, . . . than upon the vessels of the United States, and upon the like goods, wares, or merchandise, imported into the ports of the United States in the same: *Provided always*, That until such proof shall be given, British vessels coming from the said British colonial ports, and the goods, wares, and merchandise, imported in the same into the United States, shall continue to pay the foreign tonnage duty, and the additional duties upon goods, wares, and merchandise, imported in foreign vessels prescribed by the 'Act to regulate the duties on imports and tonnage,' approved the twenty-seventh of April, one thousand eight hundred and sixteen.'

⁶ *American State Papers: Foreign Relations*, Vol. 6, p. 245.

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navigation acts of 1818 and 1820, thereby prohibiting trade in British vessels between the United States and said colonies. The result was that American ships were laid up in American ports while British vessels found employment elsewhere. Recognizing that its policy was bringing disaster to American shipping the Government of the United States attempted to reopen the subject with Great Britain. This the British Government was determined not to permit, refusing for a time even to carry on correspondence on the subject with the American Government. The Government of the United States then made this proposal which represents a complete change of front and attitude on its part:⁷

The President of The United States is willing to recommend to Congress at its next Session, 1st, To open again the Ports of the United States to British Vessels coming from the British Colonies; allowing the entry, into the said Ports, of British Vessels, laden with such British produce, or produce of the British Colonies, as American Vessels can lawfully import, without paying any alien or discriminating Duties and on payment only of the same and no higher Duties or charges of any kind, on either Vessels or Cargoes, than are under the same circumstances payable by American Vessels or Cargoes; 2dly, To abolish the restriction contained in the Act of March, 1823, which confines the Trade to a direct Intercourse between the British Colonies and the United States. . . .

The Undersigned has therefore been instructed to enquire, whether if Congress should, during its next Session, pass a Law to the effect above stated, the Order in Council of the 27th of July, 1826, will be revoked, the discriminating Duties on American Vessels in the British Colonies be abolished, and those Vessels be allowed to enjoy the privileges of Trade and Intercourse with those Colonies, according to the Act of Parliament of the 5th of July, 1825.

⁷ Extract from a letter of Albert Gallatin, Minister of the United States to Great Britain, to Lord Viscount Dudley, H. M. Principal Secretary of State for Foreign Affairs, dated August 17, 1827. See *British and Foreign State Papers*, Vol. 14, pp. 982, 983.

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He prays Lord Dudley to favour him with an answer to that enquiry, the object of which is only to ascertain the intentions of His Majesty's Government, in reference to an Act of the tenour aforesaid, that should be passed by Congress at its next Session.

The above proposal, in the words of Louis MacLane, Envoy Extraordinary and Minister Plenipotentiary from the United States to Great Britain, in a letter to the Earl of Aberdeen, H. M. Principal Secretary of State for Foreign Affairs, dated March 16, 1830, "concedes to Great Britain the right of regulating the trade with her Colonies according to her own interests, and asks no exemption from the discriminating Duties which she has instituted in favour of her own Possessions. It invites a participation in a direct, rather than a circuitous trade, upon terms which Great Britain deliberately adopted in 1825. . . ." ⁸

The British Government refused to give assurance to the American Government that it would remove the interdiction on American trade with its colonies even if Congress should pass such a law as the Government of the United States proposed. It required as a preliminary condition to any reconsideration of the subject that the United States should abolish its discriminations against British vessels and goods coming from the British colonies. This condition was fulfilled by the United States by the Act of May 29, 1830,⁹ which was to come into effect when the President of the United States should receive evidence that the direct trade of British colonial ports would be opened on terms provided in the act to the vessels of the United States. That Act provided that "the ports of the United States shall be opened indefinitely or for a term fixed, as the case may be, to British vessels coming from the said British colonial possessions, and their cargoes, subject to no other

⁸ *British and Foreign State Papers*, Vol. 17, p. 855.

⁹ 4 Stat., 419.

or higher duty of tonnage or impost, or charge of any description whatever, than would be levied on the vessels of the United States, or their cargoes, arriving from the said British possessions; and it shall be lawful for the said British vessels to import into the United States, and to export therefrom, any article or articles which may be imported or exported in vessels of the United States. . . .” The Act also provided for the repeal or suspensions of the Navigation Acts of 1818 and 1820 and of the Act of March 1, 1823, which restricted to the direct trade British vessels engaged in the commerce between the United States and these British colonies.

The Act provided, on the other hand, “that the vessels of the United States and their cargoes, on entering the colonial ports aforesaid, shall not be subject to other or higher duties of tonnage or impost, or charges of any other description, than would be imposed on British vessels or their cargoes, arriving in said colonial possessions from the United States; that the vessels of the United States may import into the said colonial possessions from the United States any article or articles which could be imported in a British vessel into the said possessions from the United States; and that the vessels of the United States may export from the British colonies aforementioned, to any country whatever, other than the dominions or possessions of Great Britain, any article or articles that can be exported therefrom in a British vessel, to any country other than the British dominions or possessions as aforesaid; leaving the commercial intercourse of the United States, with all other parts of the British dominions or possessions, on a footing not less favourable to the United States, than it now is. . . .”

The Government of Great Britain expressed its willingness to accept the provisions of this act as a fulfilment of the conditions of trade with her colonies as prescribed by

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the Act of Parliament of July, 1825. Thereupon President Jackson, on October 5, 1830,¹⁰ issued his proclamation opening the ports of the United States to British vessels and cargoes coming from the British colonial ports. A month later Great Britain, by Order-in-Council,¹¹ removed its interdiction against American vessels.

¹⁰ 4 Stat., 817.

¹¹ *British and Foreign State Papers*, Vol. 17, p. 893.

APPENDIX VI

STATEMENT BY W. S. CULBERTSON RELATING TO THE NATIONAL- TREATMENT CLAUSES OF THE TREATY OF COMMERCE AND CONSULAR RIGHTS WITH GERMANY

During the early months of 1924, the Foreign Relations Committee of the United States Senate was considering the Treaty of Commerce and Consular Rights with Germany. Mr. Culbertson was requested to discuss the most-favored-nation and national-treatment clauses of the treaty in executive session. His views were subsequently criticized by Senator Ransdell, Vice Chairman Plummer of the Shipping Board, and others. He made a reply of which the following is a part:¹

Before commenting upon certain statements by Senator Ransdell and Vice Chairman Plummer, several observations will make my position clear:

(1) I am in favor of developing the American merchant marine. I believe, however, that the adoption of a policy of discriminating duties in favor of American shipping at this time would be an admission of defeat. I am not a "practical" shipping man and for that reason am perhaps better able to see that discriminating duties in favor of our ships can not be a material factor in the revival of our merchant marine. Our merchant shipping as is all too evident, is languishing from causes which such duties can not remedy.

¹ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany, March 7 and 11, 1924, Pt. 6, pp. 280, 281, 282, 283, 289, 290.*

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(2) The arguments that we need not fear retaliation proceed upon the amusing assumption that foreign nations will retaliate in the same degree and kind as our measures. In trade wars nations do not proceed so carefully. They retaliate to hurt and they select measures which will injure themselves least and the rival nation most. Nothing shows this better than our early history. Our early statesmen did not retaliate in degree and kind. They adopted measures which they believed would most effectively injure their rivals. Certain shipping interests in the United States, if we are to accept as their position the arguments made before the committee, are willing to subject not only our shipping but other American commercial interests to retaliation if they can but insure higher freight rates upon a portion of our inborne trade.

(3) America's expanding overseas interests make our commercial development vulnerable at many points. Our manufacturing growth has made many of our great industries dependent on foreign sources of raw materials and on foreign markets. Retaliation in the form of discriminatory import and export duties and embargoes may easily be serious.

(4) The argument against maintaining the century-old policy of national treatment to shipping is that we should be left free to adopt any policy that we like. The Shipping Board itself has fallen into this trap of plausibility.² Apart from the fact that it leaves other nations also free, those who press the argument are not entirely candid. They not only want to be "free"; they have made up their minds in favor of discriminations. A repudiation of the national-treatment guarantee in the German treaty will mean the reversal of the policy of liberal reciprocity advocated and maintained by American statesmen since before the adoption of the Constitution and a notification to the world that we are going back to the days of discrimination and exclusion which characterized the old Navigation Laws of England.

(5) The price which certain shipping interests are willing to ask the Nation to pay is disclosed in this passage from the testimony.³

"Senator Swanson: You can discriminate; but the most-

² *Hearings, op. cit.*, p. 164.

³ *Hearings, op. cit.*, p. 138.

favoured-nation clause will not allow you to discriminate against Germany and give Great Britain this favor and let her ships come in.

"The Chairman: No.

"Senator Ransdell: I see your point. We ought to settle the whole policy.

"Senator Fletcher: We will have to get rid of about twenty-seven treaties, and now is the time to do it.

"Senator Ransdell: And, as Senator Fletcher says, now is the time to do it. I do not fear retaliation."

As a matter of fact the most-favored-nation clause and the national-treatment clause are so interwoven in the complex structure of modern treaties that to make a reservation of the national-treatment clause will pull the most-favored-nation guaranty down with it. Thus at a time when America's commercial expansion is in greater need of the stabilizing influence of a comprehensive commercial treaty structure than ever before a persistent effort is made to sacrifice this larger objective in order to render doubtful (to put it most charitably) aid to our shipping industry.

...

As the Senator has himself stated, the American colonies had had 150 years of experience with discriminating duties. When, therefore, as I showed in my former testimony, a committee of the Continental Congress came to the conclusion that our shipping would benefit by the conclusion of treaties by which the right to levy discriminating duties was reciprocally abandoned, they must be presumed to have had accurate information based upon practical experience of the effect of such duties. They knew the comparative expense of building and running American and foreign ships and the comparative efficiency with which the vessels were managed, and it was their deliberate judgment that American vessels would have greater chance of success if discriminating duties were abandoned by the maritime nations. "The official record is there to prove this." Senator Ransdell accounts for this early attempt to abolish discriminating duties as a case of war weariness. He seems to believe that the men who declared our independence of Great Britain had not the courage to maintain a policy favorable to our shipping. Incidentally, he does not accuse these men, including Benjamin Franklin, John Adams, Robert Morris, and James Wilson, of proposing the aboli-

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tion of discriminating duties because they were pro-British. I notice some disposition nowadays to accuse any and all who now oppose such duties of being subject in greater or less degree to British influence. The charge can not be made against the Americans who first proposed the innovation, and it should not be made against us who follow in their footsteps.

In 1815 the American Government made a treaty with Great Britain which made the first actual breach in the system of discriminating duties, and as Chairman Lasker of the Shipping Board mentions,⁴ the proposal to make the breach was made by the United States. Senator Ransdell says in effect that the Napoleonic wars were very unfavorable to American shipping but that it was sustained by the discriminating duties. The effects of the war I shall refer to again, but here I wish to point out that the official record is there to prove that Madison, his Cabinet, and a two-thirds majority of the Senate did not believe that the discriminating duties were the cause of the maintenance of American shipping during the Napoleonic wars. They were not pro-British, and it can not be imagined that had they believed that our discriminating duties were more helpful than foreign discriminations were hurtful they would have proposed even a limited breach in the system. This treaty, it may be noted, was ratified at a time when the New England States and New York alone had enough votes to defeat it in the Senate, and it can not be maintained that it was put through by a group of theorists and internationalists against the wishes and the interests of men who had sailed to all ports of the world and whose livelihood and profits depended upon such factors as discriminating duties at home and abroad.

...

It will be recalled that I appeared before this committee at the request of the committee to give it the benefit of my study of and experience with commercial treaties. I appeared before the committee in executive session. Immediately after my testimony, however, a leading article appeared (February 9, 1924) in the *Marine Journal* (self-styled "America's leading marine weekly") which shows that its writer had either seen my testimony or had received a substantial paraphrase of it. The article, among other things, said: "There is some conjecture in Washington as

⁴ *Hearings, op. cit.*, p. 160.

to the reasons for the activity of Doctor Culbertson in opposing every policy that is offered for the aid and encouragement of the American merchant marine."

It is pathetic to see the tenacity with which certain representatives of shipping interests cling to the outworn and repudiated policy of discriminating duties in favor of American shipping. To them this policy seems to be the last forlorn hope. I feel more optimistic concerning American shipping. I believe in the development of an American merchant marine. It does not seem to me that spokesmen for the shipping interests will get very far by impugning the motives of another American citizen merely because he expresses a judgment based upon long study and experience that a policy which is being advocated will not result in a balance of advantage to American shipping. If Congress wishes to destroy the last opportunity to revive the American merchant marine, it can do so most effectively by adopting a system of discriminating duties in favor of American ships.

The innuendoes and misrepresentations have not been confined to the partisan press. Senator Ransdell in his prepared statement⁶ lifts a statement of mine out of its context⁶ and gives to it a wholly different meaning from that which the context shows was intended. This misinterpretation has then been taken up and repeated at other places in the testimony. Senator Swanson had asked me, as the context later shows, for "an estimate as to what our ships would carry in cargoes without discrimination, and what their profits would possibly be, if we would start on these discriminatory duties, considering that we would import goods, and lose, possibly, if retaliation came, in the export business. I should like to know to what extent the shipping interests would be benefited or hurt from a material standpoint by changing this policy." Senator Lodge remarked⁷ "That must be largely speculative," and a little further on Senator Brandegee said to Senator Swanson, "You have given him a pretty large order, Senator."

I find nowhere in the record the evidence that Senator Ransdell or any other witness has given a complete answer to Senator Swanson's question. Senator Ransdell has not even totaled out

⁶ *Hearings before the Committee on Foreign Relations, United States Senate, on "Treaty of Commerce and Consular Rights with Germany,"* March 7 and 11, 1924, Pt. 6, p. 148.

⁶ *Ibid.*, p. 48.

⁷ *Ibid.*, p. 49.

trade with what he classed as nonmaritime nations but bases his "expert" testimony on a guess that it is much greater than it really is. When the question was addressed to me, I realized the difficulty of making adequate reply. A long detailed research would be necessary to answer it fully and even then the conclusions must necessarily be tentative and to some extent conjectural. Since no one else has undertaken to make such a study, it may not be entirely to my discredit that I answered the question of Senator Swanson in the negative. It would not be becoming in me to say whether or not I have been a qualified witness on the subject of shipping. I am, of course, not such an expert as are Senator Ransdell and Vice Chairman Plummer. Presumably, however, this is the very reason why I was invited to appear before the committee.

APPENDIX VII

PANAMA CANAL TOLLS

In the nature of an indirect aid to American shipping was the proposed remission of tolls to American ships passing through the Panama Canal. This controversy was vigorously waged for a number of years and involved first the problem of the economic desirability of such an indirect subsidy to American ships and secondly, the violation of the Hay-Pauncefote Treaty with Great Britain. The difference of opinion which exists with respect to this latter question is due to the somewhat vague meaning of the words "all nations" as used in Section 1 of Article III of the Hay-Pauncefote Treaty, which was concluded between the United States and Great Britain on November 18, 1901. Section 1 of Article III of that treaty is as follows:

The Canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

Those, who opposed the use of the Canal by vessels of Great Britain on payment of the same tolls as vessels of the United States, contended that the words "all nations" do not, and were never intended to, include the United States. Those words, they asserted, mean "all other nations." They declared that this section of ~~the~~ treaty is simply a guaranty that in the use of the Canal no foreign nation would receive less favorable treatment, as regards

tolls, charges and other conditions, than any other foreign nation.

Opposed to this view was that of the government and people of Great Britain, and a great body of people in the United States and other countries, who contended that the word "all" is an inclusive term and as used in the treaty included all and every nation not excepting the United States.

To settle this controversy it is necessary to know what was understood to be the meaning of the words "all nations" by the governments which negotiated the treaty. Also, it is necessary to take into consideration the fact that the Hay-Pauncefote Treaty does not stand alone, but that there is incorporated as part of that treaty, and as a condition of Great Britain's consent to the termination of the Clayton-Bulwer Treaty, a provision that the Hay-Pauncefote Treaty is entered into "without impairing the 'general principle' of neutralization established in Article VIII of that Convention" (the Clayton-Bulwer Treaty).

In the correspondence that passed between the two governments during the negotiation of the Hay-Pauncefote Treaty there is no mention of the terms under which the citizens of the two countries were to use the Canal, other than that there should be applied the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer Treaty. So it is necessary to go back to Article VIII of the Clayton-Bulwer Treaty and the negotiations preceding that treaty to find on what terms the Canal was to be operated. Article VIII of that treaty is as follows:

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North

and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

Under the above article no charges or conditions shall be imposed other than the governments of Great Britain and the United States "shall approve of as just and equitable." Under this provision it would seem that the United States would be prohibited from imposing any tolls which Great Britain objected to as unjust and inequitable; and it has been the contention of the Government of Great Britain that tolls imposed upon any basis which did not require American shipping to bear its just proportion of the cost of maintenance and operation of the Canal, were unjust and inequitable.

But the next stipulation of Article VIII is the crux of the whole matter. It provides "that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States and Great Britain engage to afford." Does the expression "being open on equal terms" refer to tolls, charges, and conditions of traffic, or only to conditions of traffic? Though the language is somewhat vague on this point, the correspondence between

the two governments during the negotiation of the treaty leaves no room for doubt. Mr. Clayton, Secretary of State for the United States, in proposing the treaty, sent Mr. Rives, United States Minister to France, to London and instructed him to say to Lord Palmerston, British Secretary of State for Foreign Affairs:¹

The United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms and a footing of perfect equality for all.

That the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belonged to all mankind.

Throughout the conversations and correspondence which was carried on between the representatives of the two governments during the negotiation of the treaty, it was frequently stated that the United States sought no exclusive advantages or favors for its own citizens, and that citizens of both countries were to receive equal treatment in their use of the Canal. Moreover, Article VIII of a preliminary draft of the treaty provided that in case either government should decide to extend its support, encouragement, or protection for the construction of any railway or canal to connect the Atlantic and Pacific, it "will neither request nor accept from any persons, company, or state, any advantages or privileges for its own citizens or subjects with respect to such railway or canal, which shall not be open for all other Governments to obtain for their citizens or subjects upon the same terms as those which are proposed to or accepted by itself."²

¹ Quoted by Senator Root in an address in the United States Senate on January 21, 1913. See *Congressional Record* for that date. 62d Cong., 3d sess., p. 1820.

² *British and Foreign State Papers*, Vol. 40, p. 1010.

This was the draft that was agreed upon by Mr. Clayton and Sir Henry Bulwer, British Minister to the United States, and it was this draft that Sir Henry sent to his government and was authorized to sign on its behalf. Afterward a few minor changes were made in the draft by Mr. Clayton, with a view to improving its diction. The revised draft was sent to Sir Henry, who wrote saying that he accepted the amendments with the understanding that the changes were "merely verbal, and in accordance with the general spirit of my instructions, . . ." ³

Now as to what was understood by the Government of the United States to be the meaning of the Hay-Pauncefote Treaty at the time that treaty was concluded.⁴ This

³ *Ibid.*, p. 1026.

⁴ In the *Congressional Record* for Oct. 8, 1921 (p. 6126), 67th Cong., 1st sess., are contained, in reply to questions from Senator McCumber, statements from Mr. Joseph H. Choate and Mr. Henry White, respectively United States' ambassador and chargé d'affaires in Great Britain when the treaty was negotiated. The questions and answers follow:

(1) Was it understood by the state departments of the two countries that the words "vessels of commerce and war of all nations" included our own vessels?

(2) Was it understood that these words also included our own vessels engaged in the coastwise trade?

Mr. Choate: I answer both of these questions most emphatically in the affirmative. The phrase quoted "vessels of commerce and war of all nations" certainly included our own vessels, and was so understood by our own State Department and by the foreign office of Great Britain. It was understood by the same parties that these words also included our own vessels engaged in the coastwise trade.

* * *

In the whole course of the negotiations there was never a suggestion on either side that the words "the vessels of commerce and war of all nations" meant anything different from the natural and obvious meaning of these words. Such language admitted of the exemption or exception of no particular kind of vessels of commerce and of war of any nation, whether of vessels engaged in foreign trade or coastwise trade. . . . The parties to the nego-

probably is best expressed by Senator Root, in his address in the Senate on January 21, 1913. He said:

... The Senate rejected the amendment (to the proposed Hay-Pauncefote treaty) which was offered by Senator Bard, of California, providing for preference to the coastwise trade of the United States. This is the amendment which was proposed:

tiations tried to use terms of the meaning of which there could be no doubt or dispute, and they meant what they said and said what they meant.

Mr. White: I was in constant touch, as secretary of the embassy, with these negotiations, each phase of which Mr. Choate was good enough to tell me of. Indeed, I was often present during their discussion of the question at issue, which took place for the most part at the embassy.

Under these circumstances there is but one way in which I can answer the inquiry contained in your letter "as to the understanding of Mr. Hay and Lord Pauncefote on the question of the use of the canal by vessels engaged wholly in the coastwise trade," to wit:

(1) That the exemption of our coastwise shipping from the payment of tolls was never suggested to, nor by, any one connected with the negotiation of the Hay-Pauncefote treaties in this country or in England.

(2) That from the day on which I opened the negotiations with Lord Salisbury for the abrogation of the Clayton-Bulwer treaty until the ratification of the Hay-Pauncefote treaty the words "all nations" and "equal terms" were understood to refer to the United States as well as to all other nations by every one of those, whether American or British, who had anything to do with the negotiations whereof the treaty last mentioned was the result.

On the same page of the Congressional Record appears a letter from Mr. F. W. Johnson, who talked with Mr. Hay upon this subject. The letter follows:

I asked Col. Hay plumply if the treaty meant what it appeared to mean on its face and whether the phrase "vessels of all nations" was intended to include our own shipping or was to be interpreted as meaning "all other nations." He replied:

"All means all. The treaty was not so long that we could not have made room for the word 'other' if we had understood that it belonged there. All nations means all nations, and the United States is certainly a Nation."

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The United States reserves the right, in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in the coastwise trade.

I say, the Senate rejected that amendment upon this report* (the report of the Senate Committee on Foreign Relations, of which Senator Cushman K. Davis was Chairman), which declared the rule of universal equality without any preference or discrimination in favor of the United States as being the meaning of the treaty and the necessary meaning of the treaty.

The interpretation of international treaties aside, there still remains the question whether it is wise policy to discriminate in favor of our ships in their passage through a great international waterway such as the Panama Canal. If the income from the Canal is to pay its operating expenses, there seems to be no reason why American ship owners should be exempted. Some one will have ultimately to pay the cost. If, therefore, exemption from canal tolls be regarded as a form of subsidy, it would be better to pay it direct out of the Treasury of the United States and avoid the international ill feeling which inevitably results from preferences in favor of national ships.

*Some question was raised during the debate in 1921 on this question as to the reason for the rejection of the Bard amendment. Senator Ransdell submitted statements obtained in reply to letters of inquiry, from a large number of senators and former senators who voted against the Bard amendment, purporting to show that the Bard amendment was defeated not because it contravened treaty rights of Great Britain but because it was considered that the United States had a perfect right to regulate the coastwise traffic of the United States as it saw fit and the Bard amendment was unnecessary. This, however, was not the reason for its rejection, according to Senator McCumber, who was a member of the Senate at the time the Hay-Pauncefote treaty was ratified. He agrees with former Senator Root, stating that the Senate rejected the Bard amendment because the Senate understood that Great Britain had agreed to the treaty "only on condition that no vessel of the United States would have a right superior to those of her own vessels and the vessels of the entire world." (*Congressional Record* for Oct. 8, 1921, p. 6870.)

APPENDIX VIII

COMMERCIAL POLICIES AFFECTING COMMUNICATIONS

Rapid advances in aircraft and electrical communications make it impossible to speak categorically concerning international communications. But the following observations on postal communication, aircrafts, cables, and radio will indicate their relation to the subject matter of this volume:

A. POSTAL COMMUNICATIONS

Messenger of sympathy and love
Servant of parted friends
Consoler of the lonely
Bond of the scattered family
Enlarger of the common life.

Carrier of news and knowledge
Instrument of trade and industry
Promoter of mutual acquaintance
Of peace and of goodwill
Among men and nations.

This is the definition of a post office chiseled on the front of the Post Office Building in Washington, D. C. We take the service thus described as a matter of course, but it was not until the forties of the nineteenth century that the postage stamp and the idea of the flat rate began to make universal the world-wide intercommunication that is epitomized by a stamp album. So important now are mail communications to the people of the United States and of other

lands that any attempt to extend them is accorded universal acclaim. Such, however, has not always been the case. It may seem strange that in the United States, where all sections of the country are linked together by extensive postal facilities, there should ever have been any opposition to the development of these services. But no less a person than Daniel Webster at one time opposed the extension of mail service to the region of the Pacific Coast. In 1835, during the discussion of a measure in the United States Senate to establish a postal route from Independence, Missouri, to the mouth of the Colorado River, he closed his speech in opposition with the following words:¹

What do we want with this vast worthless area; this region of savages and wild beasts, of deserts, shifting sands, and whirlwinds of dust, of cactus and prairie dogs? To what use can we hope to put these great deserts or those endless mountain ranges, imposing and covered to their very base with eternal snow? What use have we for such country? Mr. President, I will never vote 1 cent from the Public Treasury to place the Pacific Coast 1 inch nearer to Boston than it now is.

This statement of Webster is now nothing but a curious antique. The demand for the extension and cheapness of communication has been increased in force until to-day the dominant purpose in the establishment and maintenance of postal communications is the largest possible service at the lowest possible rates. In Great Britain and throughout the British Empire efforts to reduce the charges for postal service have been most successful. The aim has been the transmission of a letter anywhere in the British Empire for a penny. The United States has as a general rule regarded the establishment and extension of postal facilities as of more importance than the direct production of revenue therefrom. Consequently, extensions and im-

¹ Melius, Louis, *The American Postal Service*, p. 61.

provements have been made, and when a deficit has resulted, it has been made up through taxation.

Universal Postal Union

Postal communications among nations are controlled by the Universal Postal Union, which was established at Berne in 1875. This union grew out of a postal conference held at Paris in 1863 at the instance of the United States. By the terms of the convention, under which the Universal Postal Union was established and to which practically every country in the world is a party, the entire world is constituted as one postal district, in which there is practically a universal rate of postage, with one code of postal regulations covering, as far as it goes, the more than one-quarter of a million post offices in the world.

Modifications of the Berne Convention were signed in Paris in 1878, in Lisbon in 1885, in Vienna in 1891, in Washington in 1897, in Rome in 1906 and at Madrid in 1920. The ultimate goal has been one universal postal district, one code of postal laws, and the free conveyance of mails between nation and nation. By a convention concluded at Buenos Aires in 1921 by the First Pan-American Postal Congress, provision was made for free transportation of mails exchanged between the United States and other countries in the Western Hemisphere. The Postal Congress at Buenos Aires also adopted a parcel-post convention providing for lower and more uniform delivery charges, it being stipulated that the maximum of such charge, not including the regular customs duty, should be 10 cents, and specifically prohibiting any other charges than those provided therein.² At Madrid a special postal convention was also concluded (subject to ratification) between Spain, the Philippines, and Pan-American coun-

² There are parcel-post conventions between the United States and practically every other country and colony in the world.

tries. This convention provided that postage rates on letters and post cards from each country to any of the other contracting countries shall be the domestic letter or post card rate, respectively, of the country of origin, and that each of the contracting countries shall transport freely and gratuitously by any means employed in its domestic postal service mails received from any of these countries destined to any other. In addition to the above conventions the United States has special postal conventions with Canada, Cuba, Mexico, and Panama.

In addition to what are generally regarded as postal services, in a narrow sense, the postal administrations of most countries perform other useful services. Postal banking, for example, is a general postal utility, while in some countries messenger service is provided; and in most foreign countries other forms of communication, such as wire and wireless telegraphs, are operated by the postal administration. But in those countries where many and varied services are performed by the postal administration, such services usually have not been performed by private persons. European countries particularly have established and maintained many postal services which in the United States are provided by private initiative.

The value of postal communications in the development of international trade and in the promotion of peace and good will among nations cannot be overestimated. The exchange of publications and messages of friendly interest and regard among large numbers of peoples in all countries is bound to exert an enormous and beneficial effect upon the relations of men and of nations.

B. AIRCRAFT

Airplane

Since 1914 the airplane has become increasingly important as a supplement to the railroad and ocean liner in

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the transmission of the mails. It not only advances the delivery of letters and light objects of high intrinsic value, but it saves time in the transmission of blue prints and specifications for contracts which could not be telegraphed or cabled. It also has become an important facility for transporting passengers.

An air mail service has been established in Great Britain to expedite the delivery in the north of England and Ireland of the American mails discharged from eastbound passenger steamers calling at Plymouth, but the chief interest of the British in air communication is with foreign countries and within the Empire. Air communications have been established from the United Kingdom to the Continent,³ to Cairo and thence to Bagdad.

Air communication within the Empire is a part of the imperial program. At the Imperial Economic Conference in 1923 an Air Communications Committee was established on the 19th of October, 1923, with the following terms of reference:⁴

That a Committee be set up (1) for the purpose of enabling the Air Ministry and the Dominion Representatives to discuss the financial, technical, and operational details of the Burney Scheme with a view to ascertaining how far and in what way it is possible to ensure Imperial coöperation; (2) for the purpose of affording an opportunity for an interchange of information with reference to other questions connected with Civil Aviation and for arranging the best means of ensuring a continuance of this interchange of information for the future.

The committee met on the 29th of October, discussed the subjects within its terms of reference, and decided to recommend the following resolutions for adoption:⁴

³ To Paris, Brussels, Rotterdam, Amsterdam, and Hamburg.

⁴ Imperial Economic Conference of Representatives of Great Britain, the Dominions, India, and the Colonies and Protectorates, held in October and November, 1923, *Record of Proceedings and Documents*, London, 1924, Cmd. 2009, pp. 363-5.

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(1) That the British Government should circulate to the Dominions and India a statement showing the present anticipated operational performances of rigid airships and in the future should circulate regularly up-to-date information of the progress of the Burney airship proposals in order that consideration of Empire participation in these or future airship proposals might be facilitated.

(2) That the British Government should prepare a draft procedure designed on a reciprocal basis to secure more rapid and more extensive interchange of information in regard to civil aeronautics and should submit this for the consideration of the other Governments of the Empire with a view to general adoption.

(3) That having regard to post-war developments, any British oversea countries which have no up-to-date experience of air photography and contemplate the use of air survey, would be well advised, whenever possible, to consult other Empire Governments having such experience before accepting estimates or schemes providing for its use.

Air routes have been laid out all over Europe. They extend as far north as Belfast, Christiania, and Helsingfors and east to Petrograd, Moscow, Lemberg, and Constantinople.⁵ Planes fly on regular schedules. Time tables are printed and regular charges are provided for both passengers and freight. From France and Spain lines run to North Africa, Tunis, Biskra, Oran, and Casablanca, and it is planned to extend the Casablanca line to Dakar and then to Pernambuco, Brazil.

Although the airplane was invented in the United States, the United States has lagged far behind the rest of the world in the development of commercial aviation. Its postal air service,⁶ however, is the most extensive service of its kind in existence. The postal air service now (1924) covers about two million miles a year and has an average performance percentage of over 96. The air mail service

⁵ See map in *U. S. Commerce Reports*, Aug. 25, 1924.

⁶ For this service the Government has its own planes and pilots, and maintains an organization all of its own.

was started in May, 1918, with a mail route extending from Washington, D. C., to New York City, via Philadelphia. This service was successful, and a year later the first leg of the transcontinental route was established from Cleveland to Chicago. Further extension followed rapidly. The Cleveland-Chicago route was extended to New York and, in September, 1920, to San Francisco, via Omaha, Cheyenne, Salt Lake City, and other cities. In addition to the transcontinental route, lateral routes were established from St. Louis to Chicago and from Chicago to Minneapolis.⁷

A number of industrial concerns in the United States use airplanes for commercial purposes, and aerial services for passenger and cargo traffic have been organized, but commercial aviation has not yet been organized in this country on a large scale. One important factor that has retarded its development here has been the lack of legislation providing for the inspection and licensing of pilots and machines, and regulations governing aerial traffic. Congress, however, now has under consideration a bill (S. 3076) which provides for the control of civil aviation by the creation in the Department of Commerce of a Bureau of Civil Aeronautics, and contains regulations to govern the operation of civil aircraft. With the passage of this legislation and the provision of meteorological services and other aids to aerial navigation such as air ports, lighthouses, beacons, and markers, it is believed that the success of commercial aviation in the United States will be assured.

Lighter-Than-Air Ships

The use of the rigid airship has developed more slowly than the use of the heavier-than-air craft. The develop-

⁷ For details concerning, and progress in, the American air mail service, see annual reports of the Postmasters General.

ment of the former received a serious setback by the disasters which befell the giant British rigid, ZR 2, and the United States Army rigid, the Roma, which was purchased from Italy. In time, however, the rigid airship may be expected to predominate for the long-distance transportation by air of passengers and of merchandise of great weight. Its reliability and safety is shown by the experience before the war of German commercial airships which carried over 200,000 passengers without the loss of a single life and with a regularity of schedule superior to that of the railroad and steamships. The historic transatlantic trips of the ZR 3 (Los Angeles) and the coast-to-coast cruise of the Shenandoah in 1924 dramatically foreshadowed the development of this form of transportation.

The record of the German Zeppelins was made with the use of hydrogen gas, which is inflammable. Greater safety is expected from the use in future of helium gas, which has from 90 to 95 per cent of the lifting power of hydrogen and is noninflammable. This gas is found in commercial quantities only in the United States.

Aircraft and Armaments

Aircrafts were promptly adapted to many uses other than transportation and communication. They gave man another means of mastery over his environment. They are used to detect forest fires; they assist in exploring for natural resources; they afford quicker access to inaccessible places in mountains, plains, and deserts. They have advanced the study of archeology.

Furthermore, as with all the other great scientific and mechanical advances of our civilization they have been adapted to the needs of war. The World War, in fact, gave great impetus to the science and art of aeronautics.

The relation between military and commercial aircraft

is similar to the relation between the navy and the merchant marine. The extent to which commercial and military aircraft are mutually convertible is distinctly limited, but commercial aircraft contribute to military preparedness both in the training of personnel and in the developing of manufacturing capacity within the country which can readily be turned to the production of military planes. As regards the relation of aviation to national defense and the dependence of military aviation upon commercial aviation, the American Aviation Mission,⁸ in its report in 1919 to the Secretary of War considered inescapable, *inter alia*, the following conclusions:

That any future war will inevitably open with great aerial activity far in advance of contact either upon land or sea, and that victory cannot but incline to that belligerent able to achieve first and later maintain its supremacy in the air.

That for economic reasons, no nation can hope in time of peace to maintain air forces adequate to its defensive need except through the creation of a great reserve in personnel, material and producing industry through the encouragement of Civil Aeronautics. Commercial Aviation and Transportation development must be made to carry the financial load.

That no sudden creation of aerial equipment to meet a national emergency already at hand is possible. It has been proven within the experience of every nation engaged in the war that two years or more of high pressure effort have been needed to achieve the quantity production of Aircraft, aircraft engines, and accessory equipment. The training of personnel, including engineering, production, inspection, maintenance and operating forces—covering some fifty distinct trades and some seventy-five industries—has proved in itself a stupendous task when undertaken on the basis of the war emergency alone.

The Mission further stated "that the most economical way to develop a strong air service for national defence

⁸ Great Britain: Air Ministry, *Report of American Aviation Mission*. Cmd. 384, p. 6. The report of the Mission was made public by Secretary of War Baker on August 11, 1919.

is to encourage, by every means possible, the use of aircraft for commercial purposes, and thereby build up a commercial fleet at relatively small expense to the Government, which would effectively supplement its strictly military equipment in time of need."⁹

Government Aid for Aircraft

The military interest has been the chief motive for granting subsidies and other governmental aid for the development of commercial aviation. The largest subsidies have been paid by France. Although British companies were granted subsidies beginning in 1921, the aid given by Great Britain until recently has been largely indirect rather than direct. The government has assumed responsibility for the organization of airdromes, has provided wireless and meteorological services, and aided in research and experiments.¹⁰

Air Traffic Control

The use of the air as a medium of communication has injected into our already complex life new legal, commercial, and political problems. The old mercantilistic motives appeared as they had in other fields, but they yielded more easily to the social and international needs. A Convention for the Regulation of Air Navigation was concluded at Paris on October 13, 1919.¹¹ This convention was framed by an Aeronautical Commission created by the Allied and Associated Powers during the Peace Con-

⁹ *Ibid.*, p. 12.

¹⁰ For rapidly changing details about aircraft the reader is referred to current publications: *Aircraft Year Book*; *The Aërial Year Book* and *Who's Who in the Air*; *Annual Reports of the National Advisory Committee for Aeronautics* and such magazines as *Flight* and *Aerial Age Weekly*.

¹¹ Convention relating to International Air Navigation, United States: *Senate Document No. 91*, 66th Cong., 1st Sess.

ference.¹² The convention lays down rules and regulations for international air navigation and provides for their administration by a permanent commission, the International Commission for Air Navigation, which is to be established and placed under the direction of the League of Nations. This convention was signed by all the twenty-seven Allied and Associated Powers, and most of them have ratified it and passed legislation putting it into effect. The United States, however, has not ratified the convention.

Like the automobile¹³ and the truck, aircraft are having and will continue to have a deep influence upon our economic, social, and political life. Government, national and international, must evolve means to control this new force. Can property right be developed in air channels over which a regular service is operated? Does the sovereignty of a state extend indefinitely upward or shall the air above a certain height be considered an international airway with a status similar to that of the high seas?¹⁴

C. INTERNATIONAL TELEGRAPH AND CABLE

International Telegraphic Service

Years before the appearance of aircraft, the telegraph had become an accepted means of communication. Only the international aspect of land telegraphs including their relations with cables fall within the scope of this volume. Land telegraphs frequently form a link in a system of communication between states.

International land telegraphs are controlled by the In-

¹² Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, Chap. xlv.

¹³ *The Annals* (Philadelphia) November, 1924.

¹⁴ Rogers, Walter S.: "Air as a Raw Material," *The Annals* (Philadelphia), March, 1924, p. 251.

ternational Telegraphic Convention signed at St. Petersburg (Leningrad) July 22, 1875, and service regulations established thereunder. These regulations are revised from time to time, the last general revision having been made June 11, 1908. Under the terms of this Convention, which is adhered to by all the important countries¹⁵ of the world except the United States, China, Mexico, Peru, and Canada, the contracting states undertake to employ all means necessary to insure secrecy of telegraphic correspondence, to provide special wires for rapid transmission of international telegrams and to abide by the tariffs established from time to time. The contracting states reserve the right to stop transmission of any private telegrams which are considered dangerous to the security of the state or contrary to the laws of the country or to public order and sound morals, and to suspend, either generally or over certain lines, any or all international telegraphic service for indefinite periods if deemed necessary. Telegrams of state enjoy priority of transmission, and may in all cases be sent in secret language. Private telegrams may, subject to rights reserved by each state for the protection of its security, pass in transit through any contracting state, and may be exchanged in cipher between states permitting this mode of correspondence.¹⁶

*Cables*¹⁷

The first transoceanic cable was laid across the Atlantic in 1858. After a brief operation it went out of commission, and it was not until 1865 that the enterprise finally

¹⁵ In most foreign countries land telegraphs are government monopolies.

¹⁶ Schreiner, George Abel, *Cables and Wireless*, 1924.

¹⁷ For comprehensive data on cables (with rates from London), see *The Electricians' Handbook*, published annually by the *Electrician*, London. See also Bright, Sir Charles, *Submarine Telegraphs: Their History, Construction and Working*.

became successful. Since then, the progress has been such as to bring practically every part of the world in telegraphic communication with every other part, and marvelous progress has been made in the efficiency of cable communications.

Competition for Cable Control

Cables are among the facilities of economic power for which national groups, often supported by government, compete. The grand total mileage of all cables laid and in operation, April 1, 1923, was 318,158 miles.¹⁸ The British having had the foresight and industry to lay many submarine cables, their companies now control a total cable mileage of approximately 136,000 miles, while American companies control about 73,500 miles. Great Britain not only controls more cable mileage than any other country, but plans are under consideration for the further development of an interimperial system of communications. The British Government itself, with the coöperation of the Governments of Canada, Australia, and New Zealand, has constructed a cable between Australia and New Zealand and Canada, and one of the former German cables between New York and Borkum is now operated as a diverted part of this system of interimperial communications by the British postal administration.¹⁹ Owing to the extensive character of the British Empire a complete interimperial communications system would practically be a world-wide system.²⁰

The development and control of cable communications has been marked by the harshest kind of competition between cable companies, competition which has been height-

¹⁸ Schreiner, George Abel, *Cables and Wireless*, 1924, pp. 237-9.

¹⁹ For a discussion of Anglo-German cable rivalry see Lesage, Charles, *Les Câbles Sous-Marins Allemands*, Paris.

²⁰ Cf. *Proceedings of Imperial Economic Conference*, 1923.

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ened by support given the various cable companies by their respective governments. Foreign cable companies have received generous subsidies and guaranties from their governments as well as diplomatic support in gaining landing concessions. American cable companies, on the contrary, have developed their cable systems without any governmental financial support whatever. The absence of adequate regulation and nationalistic tendencies²¹ have developed many problems with respect to cables. Such practices as secret cable rates, rebates, and preferential service are said to exist. Gutta percha, the only raw material which withstands successfully the destructive influences of the waters of the ocean, is under British financial control.²² This control and attempts to monopolize landing rights and traffic, present serious problems of international cable competition.²³ The Committee dealing with international law relating to Cables and Radio of the Preliminary Conference on Communications which met in Washington in 1920, recommended for "consideration by the forthcoming World Congress on Communications a proposal for an agreement among the powers not hereafter to grant exclusive cable landing or radio rights which serve to check the development of communication facilities, ex-

²¹ See Convention for Protection of Submarine Cables, signed at Paris, Mar. 14, 1884. Many other agreements also exist between countries and between countries and companies.

²² Culbertson, W. S., "Raw Materials and Foodstuffs in the Commercial Policies of Nations," *The Annals* (Philadelphia), March, 1924, p. 89.

²³ Schreiner, *op. cit.*, Chap. iii; *Hearings on S. 4301*: "A Bill to Prevent the Unauthorized Landing of Submarine Cables in the United States," 1921; *Hearings on S. 1651*: "A Bill Providing for the Construction of a Pacific Cable, and for Other Purposes," 1919; *Hearings before a Subcommittee of the Committee on Naval Affairs of the United States Senate on the Government Ownership or Control of Radio-telegraphy and Cable Communication in its Military and Commercial Aspects*, 1919.

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ceptions being made in cases where there is insufficient traffic to justify duplication of facilities.”²⁴

D. RADIO

Rivalry in Radio Communications

International rivalry for the control of the facilities of radio telegraphy and radio telephony parallel the rivalry over cables. In the United States, the high-power radio stations, except those owned by the government, are owned by the Radio Corporation of America. This company was formed by the General Electric Company and the American Telephone and Telegraph Company and has used the wireless patents of these two companies and of the Western Electric Company, the Westinghouse Electric and Manufacturing Company, and the United Fruit Company. Whatever monopoly the Radio Corporation, however, may have, it is not conferred by the government. The Federal Telegraph Company of California received a concession for radio communications between the United States and the Far East. With the consent of China the concession is now held by the Federal Telegraph Company of Delaware, controlled by the Radio Corporation of America, but in which the California company has an interest. The United Fruit Company has established a number of low-power stations for communication between the United States and certain places in Central America and in other regions of the Caribbean. Germany, France, Italy, Norway, and Japan each has developed to a greater or a less degree communications by high-power radio stations. The French, like the British,²⁵ have plans for linking up their wide colonial possessions by means of this form of com-

²⁴ Press release of U. S. Department of State, Dec. 7, 1920.

²⁵ Great Britain. Imperial Economic Conference, *Record of Proceedings and Documents*, Cmd. 2009, 1924, pp. 366-413.

munication. The Italians and the Belgians have already dotted their colonies with wireless stations.

The patent situation has greatly affected the development of radio communication.²⁶ As in the case of cables exclusive concessions and attempts to obtain them have played an important part. China in this field as in many others furnishes typical illustrations.²⁷

International Radio Communications

The Radio Corporation of America has entered into a number of agreements with foreign governments and radio companies which gives it control of the transmission and receiving of radio messages between the United States and foreign countries.

Recently, the representatives of the Radio Corporation, the British Marconi Company (the British Co.), The Compagnie Générale de Télégraphie sans Fil (the French company), and the Gesellschaft für Drahtlosse (the German Company) met in Paris for over two months and concluded an arrangement for the development of the communication of the South American countries which was substantially as follows:

All four parties have granted all their external wireless communication rights in the South American republics to trustees to be held for the four parties in equal shares. The Radio Corporation of America, in addition to its trustees, names the chairman, who shall be a prominent American, not connected with the Radio Corporation. The chairman may break a tie or veto

²⁶ An interesting field of study is presented in the relation of patents to the carrying out of commercial policies. Patents also are becoming increasingly important in monopoly control both in domestic and international commerce.

²⁷ MacMurray, John V. A., *Treaties and Agreements with and concerning China, 1894-1919* (1921). See also *Report of the British Imperial Wireless Telegraphy Committee, 1919-20*, Cmd. 777; Bright, Sir Charles: *Telegraphy, Aeronautics and War, 1918*; Schreiner, G. A.: *Cables and Wireless, 1924*.

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any action of the majority of the trustees, which in his opinion is unfair to the minority of the trustees, so that no effective action can be taken without American approval, thus carrying the principle of the Monroe Doctrine into the field of communications in the Western Hemisphere and giving the American effective leadership. It is proposed that under the trusteeship, national companies will be formed in each of the South American countries for the conducting of their international communication service. Each station so erected is to be under the direct control of an operating committee, one representing the British, one representing the French, one representing the Germans, and one representing the Americans. The purpose of this operating committee is to insure against discrimination between the nationals in the freedom of communication. Acting under this program, a station is now being erected in the Argentine and a concession has been obtained and financial commitments made in Brazil.²⁸

An arrangement similar to the one relating to South America is projected by the Radio Corporation for China.

Mr. Young's contention as set forth in his letters to Mr. Denby, Secretary of the Navy, and Mr. Hughes, Secretary of State, is that external radio communications should be regarded as a public utility, subject to government control and that the public interest can be best served by a single public service company, regulated by the government with respect to rates, service and return,²⁹ but unilateral regulation is unlikely to succeed. Any effective regulation of an international activity such as radio will have to be in the form of joint regulation by the countries immediately concerned.

²⁸ Excerpt from letter of Owen D. Young to James R. Sheffield, dated December 7, 1921. Federal Trade Commission: *Radio Industry, 1924*, p. 61. The reference of Mr. Young to the Monroe Doctrine in this passage is unfortunate and should not be taken as in any respect an accepted interpretation of the doctrine. It represents a tendency to give to the Monroe Doctrine an economic significance which it is believed American public opinion would distinctly oppose.

²⁹ Federal Trade Commission: *Radio Industry*, pp. 66, 67.

During the World War an Inter-Allied Wireless Commission had been created to control radio communications for war purposes. Cable questions, particularly with respect to the German cables, also came up for consideration at the Paris Peace Conference. In Paris in 1919 the five Allied and Associated Powers agreed to call "An International Congress to consider all international aspects of communications by land telegraph cables or wireless telegraphy," with a view to providing "the entire world with adequate facilities of this nature on a fair and equitable basis." At a preliminary session of this conference, which met at Washington in 1920, all of the outstanding questions with respect to electrical communications were raised. This conference, made up of representatives of the principal Allied and Associated Powers, was summoned to consider all forms of communication and to make recommendations for the control of international communications including the disposition of the former German cables.

This conference proposed the establishment of an international communications union analogous to the Postal Union.³⁰ In a press release issued by the United States Department of State on December 7, 1920, outlining the work of the Preliminary Conference on Communications, the following appears:

The Preliminary Conference thought it desirable to recommend the establishing of a Universal Electrical Communications Union having for its object the international reciprocal exchange of telegraphic and telephonic communications by landline, cable, radio and all other electrical devices, and other forms of signaling, as well as the encouragement of further extension and improvement of such means of communication.

Provision is also made for establishment of an Electrical Com-

³⁰ Cf. Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, Vol. 2, p. 485.

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munications Council, consisting of representatives of Great Britain, France, Italy, Japan, and the United States, and four representatives selected by the other powers. This Council is intended to meet frequently and have general advisory and consultative powers and its function will be to encourage the improvement of facilities and the exchange of traffic. A special Committee is constituted along similar lines to deal with technical problems relating to radio and other forms of signaling.

The Central Bureau now at Berne is retained with its present functions, namely that of clearing house for the general exchange of information relating to communications. Provision is made for the assembling of International gatherings to revise the proposed Convention and regulations. The existing international telegraph regulations provide for a European régime and an extra-European régime; so far as possible, this distinction is abolished. Provision is made, however, for the organization of subordinate régimes where geographic, political or other considerations warrant. Such subordinate régimes are not to take any action detrimental to or discriminatory against the rest of the world.

CONCLUSION

The empires of the ancient world developed the means of intercommunication for government purposes. The roads of the Assyrian, Babylonian, and Persian Empires, as well as those of the Roman Empire, represented a high achievement of efficiency. But communication between persons for business or personal objects or the transmission of news was not provided for by governments, but was left to the chance of travelers or to personal messengers. Over long centuries the means of communication were greatly limited. Even during the period when the modern state was taking shape, messengers, mounted or afoot, were still provided only for the purposes of government. Means for transmitting private messages evolved slowly. In Europe the diligences and stage coaches with frequent relays of drivers and horses brought distant points relatively close and furnished the quickest possible communication.

Before the advent of steam navigation, the airplane, the telegraph, the telephone, and the radio, communication was expedited by such devices as the semaphores⁸¹ used for signaling messages over long distances. In the United States the pony express across the unsettled stretches of the West was an effort to bring the Pacific Coast nearer to the settlements on the Atlantic. It was not until the late nineteenth century that inventions came into being which virtually obliterated time and space.

The practical abolition of space and time so far as the dissemination of information is concerned is a fact of far-reaching international significance. Constructive efforts should not merely be confined to preventing the abuses of this new social fact, but should be extended to using it for the promotion of a better understanding among peoples and for the development of a basis of coöperation in the solution of essentially international questions.

⁸¹ Dumas Alexandre, *The Count of Monte Cristo*, Chap. lx.

APPENDIX IX

CONFERENCES—A FLEXIBLE METHOD, FOLLOWING AMERICAN PRECEDENTS¹

INTRODUCTION

Any practical peace plan must recognize the *nation* as the basic unit of our present civilization. It would be unwise to defy the sentiment of nationality, even if it were possible, since it is the soundest basis on which to rest a plan for the achievement of stable world peace. Proposals for preventing conflicts in international affairs have not infrequently been associated with a sentimentalism that casts reflections on many things which national loyalty holds sacred. Patriotism—intelligent patriotism—however, is too deep-seated, too fundamental, for us to attempt to build on any other foundation.

On the other hand, we can make no progress if we rely solely on isolated nations. The nation as a governing force is useful and effective up to a certain point, beyond which it breaks down. When this point is reached, the greater the effort toward a nationalistic solution the more inevitable becomes a resort to arms or at least to the bloodless dictation of the stronger powers.

This failure of the nation as a governing force, acting

¹ This peace plan is one of "twenty plans selected from the most representative of those submitted to the American Peace Award for the best practicable plan by which the United States may coöperate with other nations to achieve and preserve the peace of the world," and published in *Ways to Peace*, with an introduction by Esther Everett Lape and preface by Edward W. Bok (Charles Scribner's Sons, New York, 1924).

alone, in the peaceful solution of essentially international questions, could be amply illustrated by discussing, for example, preferential import tariffs, export tariffs, and restrictions with or without preferential features, government monopolies of essential raw materials, unfair competition in international trade, international electrical communications, combinations of capital in international relations, the struggle for oil, mineral, railroad, forest, waterpower, and other concessions in the economically less-advanced parts of the world, and the scramble for the territory itself where mineral and other wealth is found.

It is no solution of the world's problems to denounce these political and economic rivalries. Imperialism is in fact simply the overseas economic expression of our civilization. It furnishes many cases in which our material development has outrun the governmental organization of the world.

National power and national security from one point of view appear to be synonymous conceptions. Make the nation powerful by industrial, commercial, financial, and military measures and you appear to make the nation secure. But it never works out in that way. When one nation's economic life expands and its army and navy grow strong, surrounding nations, feeling insecure, attempt either singly or in combination to become a match for this growing state and it, in turn, believing its position threatened, feels insecure. With several powerful nations seeking security by imperialistic measures the result has been uncertainty, instability, and insecurity.

Permanent peace is impossible while great nations feel insecure. Permanent national security must be sought not in temporary expedients like armament, but in the firm establishment of a set of principles to regulate the relations, particularly the economic relations, of states.

The reign of law in international relations can be established only through the coöperation of nations. The acceptance of coöperation among nations to solve essentially international questions is a limitation of national sovereignty only in the sense that government by law is a limitation on personal liberty. Coöperation is necessary for the establishment of law in a field which is not and cannot be adequately regulated by national government acting in isolation. We shall not love our country less, or serve it less well, if we understand its place in the family of nations, and if we realize that, by adopting coöperation as the means of solving international problems, a nation gives up nothing that is really worth keeping and takes the only course that in the long run will preserve the finest features of nationality. Where nationalism fails, therefore, international coöperation must begin.

International government, it should be emphasized, is not a thing still to be created; it exists now, and the United States is a party to it. The tendency of national control to break down as soon as it attempts to deal with essentially international questions has resulted in the negotiation of thousands of international agreements which limit the action of nations. The significance of this world treaty structure,² which is too often taken for granted, should be emphasized, for it is an admission of the principle that national security and prosperity do depend upon coöperation with—giving to and taking from—other nations. It has produced a vast network of bilateral and multilateral treaties and international arrangements. Nations, in thousands of treaties, have, under the guidance of self-interest, limited their *power* in the interest of their *security*.

In addition to this body of treaty law, nations are

² U. S. Tariff Commission: *Handbook on Commercial Treaties*.

regulated by a system of *common international law* which is enforced in the courts of the United States.³

The problem, in general then, is not the *creation*, but the *perfecting* of international government, and the practical question is how "America's voice can be made to count among the nations for peace and for the future welfare and integrity of the United States."

THE SCOPE OF THE PLAN

This plan provides the means of effective American coöperation with other nations in promoting the tendencies toward:

The codification of existing and the enactment of new substantive international law through negotiation in conferences and subsequent ratification. (See page 553, *Conferences*.)

The administration of international law through agencies established by negotiation and subsequent ratification. (See page 559, *International Bureaus, Councils, or Commissions*.)

The interpretation and construction of international law in the world court. (See page 562, *The World Court*.)

³The U. S. Supreme Court in *The Paquete Habana* (175 U. S. 677, 700, 1899) says: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is. *Hilton v. Guyot*, 159 U. S. 113, 163, 164, 214, 215.

A practical plan should not outline a Utopian structure of world government, but rather a process by which the above tendencies may be advanced. Its acceptability to the American people will be increased if it is based, as is this plan, on accepted American precedents.

World government, like any other, must be a slow, gradual growth. International schemes with too much finality and with attempted predetermination of issues are likely to fail. The English-American common law is the product of centuries. The principles of Anglo-Saxon constitutional government were not born full-fledged. International government must have time through experience and precedent to weave itself into the fabric of the world's life.

The initiation of the plan requires:

The signing and ratification by the United States of the protocol establishing the Permanent Court of International Justice, accepting as compulsory *ipso facto* and without special convention the jurisdiction of the Court.

The enactment of a law or laws by the Congress of the United States with these six provisions:

1. Provision enabling the United States to have "representation" on and "participation" in any body, agency, or commission authorized by the American-German treaty of August 25, 1921, but prevented by the Senate reservation.⁴ In thus carrying out the reservation Congress should lay down the conditions of participation

⁴The clause of ratification of the American-German Treaty of Aug. 25, 1921, reads in part as follows: "*Resolved . . . that the United States shall not be represented or participate in any body, agency,* or commission, nor shall any person represent the United States as a member of any body, agency, or commission in which the United States is authorized to participate by this treaty, unless and until an act of the Congress of the United States shall provide for such representation or participation.*"

and provide that representation should be by and with the advice and consent of the Senate.

2. Expressly giving the assent of the United States⁵ to coöperation with other nations in accordance with the provisions of Article II of the American-German treaty of August 25, 1921 to the extent (and no further) of authorizing the President, if and when it will in his judgment "count among the nations for peace and for the future welfare and integrity of the United States," to appoint official delegates to any conference conducted under the auspices of the League of Nations, and to appoint, by and with the advice and consent of the Senate, representatives on any commission or agency under the League of Nations (for example, the Mandates' Commission).

The above-mentioned Senate reservation, for example, prevents official representation on the Reparations Commission, but the United States was represented by an "observer." The United States has not *expressly assented* to coöperation through the League of Nations under Article II, above mentioned, but it has appointed "observers" to the Opium and Customs Formalities Conferences under the auspices of the League of Nations.

Granting such authority to the President would not amount to joining the League of Nations or to accepting its political and economic obligations in their entirety.

⁵ The U. S. Supreme Court has said (*La Abra Silver Mining Co. v. United States*, 175 U. S., 423, 460): "It has been adjudged that Congress by legislation, and so far as the people and authorities of the United States are concerned, could abrogate a treaty made between this country and another country which had been negotiated by the President and approved by the Senate." *Hea? Money Cases*, 112 U. S. 580, 599; *Whitney v. Robertson*, 124 U. S. 190, 194; *Chinese Exclusion case*, 130 U. S. 581, 600; *Fong Yue Ting v. United States*, 149 U. S. 698, 721.

It would, however, open the door for coöperation with the League of Nations *in particular cases*. The United States would assume no obligations in advance of a particular participation and would then determine, in the light of the conditions at the time, how and upon what terms it would participate, if at all. If and when, however, it was determined to coöperate with other nations through the League of Nations organization, the United States would then participate officially and with full responsibility on the particular issue under consideration.

3. Authorization to the President to call or to participate in, from time to time or periodically, regional or world conferences,⁴ with definite agenda, to consider methods of removing causes of rivalry, ill will, and war among the peoples of the earth and to establish in regions, or with respect to subjects in the agenda, "a workable basis of coöperation among the nations of the earth."

4. Declaration that the policy of the United States is to participate in such conferences. These conferences would fall into two classes:

(a) Emergency conferences to meet acute situations which threaten world peace. For example:

*Senator Borah is reported to have made the following observation (Washington *Evening Star*, Oct. 30, 1923): "While we fought the League of Nations because we thought it a political alliance, we never intended that America should refrain from conferring with other powers about a world situation. Why, we did it in the Moroccan situation, and we have always stood ready to give our advice. But it's one thing to enter a political alliance and quite another to discuss economic questions. There seems to be an idea that we cannot have an international economic conference without entering into political alliances or talking about cancellation of debts. That's all wrong. We can always confer, and we never need go beyond conference if we do not desire to do so. But we cannot refuse to confer, especially when the situation concerns the markets of the United States so vitally."

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(1) The proposed law should declare it to be the policy of the United States, when a crisis threatened to precipitate a war, to unite with other nations in a conference to preserve peace, using the League of Nations' organization or not as the case might require. In other words, we would declare our willingness to adopt for the entire world the principle of conferences accepted by the United States in the Four Power Treaty⁷ for the Pacific Basin.

(2) An economic conference on reparations would fall in this category. Europe and America are to-day as two men suffering from a common evil, which singly neither can remedy, but of which they can rid themselves by coöperation. The economic life of the world is so inter-related that the United States cannot ignore entirely the serious situation created in Europe by unbalanced budgets, depreciated currency, languishing industries, and unproductive expenditures for armaments. When one part of the world fails to produce and to carry its normal share of the world's economic burden, *the rest of the world pays*.

(3) The Tacna-Arica Conference, initiated by the United States, is another precedent for the use of the conference method to adjust an acute international situation.

(b) General periodic constructive conferences to deal with the normal relations of states and to remove the causes of war by extending international law to subjects not regulated to-day by accepted international principles. Such conferences should, among other things, provide in their agenda for these measures:

⁷ Article I of the treaty between the United States of America, the British Empire, France, and Japan Relating to their Insular Possessions and Insular Dominions in the Region of the Pacific Ocean (Conference on the Limitation of Armament, Washington, Nov. 12, 1921, to Feb. 6, 1922, p. 1614) provides: "If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment."

(1) The defining and codifying of the existing international law of peace.

(2) The enactment *through negotiation and subsequent ratification* of new substantive international law (and, if and when necessary, the establishment of bureaus, councils, or commissions to investigate and publish information and in clearly defined areas and with proper safeguards to make findings and recommendations) with respect to such subjects as these: International commercial policy, conservation of world resources,* and international electrical communications.

(3) After these and similar causes of international rivalry and of the building of armaments have been considered and regulations and guarantees agreed to, then there should follow a disarmament conference or at least conferences to limit progressively international armaments.

5. Creation of a peace council, analogous to the Council of National Defense, with an adequate staff and with the Secretary of State as chairman and with the chairman and ranking minority members of the Foreign Relations Committee of the Senate and of the Foreign Affairs Committee of the House as ex-officio members, to advise concerning the foreign policy of the United States and to consider and propose agenda for international conferences.

Advantages: The Peace Council will:

Tend to restore that close coöperation between the Executive and Legislative branches of our government which the Founders of the Republic contemplated.⁸

Help to assure that pledges made by the Executive in treaty negotiations will be ratified by the Senate and approved, when necessary, by Congress (*e.g.*, when funds must be appropriated).

Tend to eliminate party politics from foreign affairs. Containing representatives of both parties, the Peace Council should contribute toward the presentation of a united front in our policy

⁸ See page 334 *et seq.*

⁹ See Hayden, R.: *The Senate and Treaties*, 1920.

toward the rest of the world. The World War Debt Commission is a precedent on this point.³⁰

Create a definite responsibility to look ahead and to plan constructively for the removal of the causes of war and for the preservation of the peace of the world.

6. Provision (although technically unnecessary) that no treaty nor international statute adopted by any conference shall be binding upon the United States until ratified by the Senate (and, if necessary, approved by Congress).

This plan is submitted to meet at least two tests of practicability:

(a) *It will not plunge the United States into European politics nor bind us to use our military or economic power in any unforeseen contingencies.* It will, however, free our hands so that we can do our "share in preventing war and in establishing a workable basis of coöperation among the nations of the earth." It is not in opposition to, or a substitute for, the League of Nations. It recognizes the indisputable fact, however, that millions of Americans, rightly or wrongly, who are in favor of helping to establish world peace, are not in favor of accepting wholesale and for an indefinite future the obligations of the League of Nations as now organized and run. It leaves the door open for the United States to coöperate in the League organization in *particular* cases where *in the judgment of the United States* we can be helpful. It preserves for us the advantages of our geographic and economic position and thereby makes more effective our action when we do act. It assumes none of the burdens of Europe's past failures but it says that for the present, and in the future

³⁰ The membership of the World War Foreign Debt Commission is as follows: Andrew W. Mellon, Chairman; Charles E. Hughes; Herbert Hoover; Reed Smoot; Theodore E. Burton; Elliot Wadsworth, Secretary; Richard Olney, and Charles R. Crisp. (The last two are Democrats.)

the United States will play its part in organizing the common life of the world. *It satisfies the deep-seated opposition in the United States to commitments of our power, military or economic, in advance to unknown contingencies.*

(b) Equally important is the fact that this plan supplements the League of Nations at its weakest point. It is notorious that the League, although doing very useful work, is not an effective medium of coöperation on the serious disputes which threaten the peace of the world. The plan outlined above is less rigid than the League and can be adapted, once it is declared to be the *general policy* of the United States, to meet any problem that threatens the peaceful relations of states.

CONFERENCES

a. Effective American coöperation with other nations in the codification and creation of substantive international law can be advanced by the further extension of the principle of conference which has been recognized as a method of coöperation many times in the foreign relations practice of the United States.

1. The United States has participated officially in many conferences dealing with technical, legal, and economic questions, *e.g.*, conferences dealing with postal matters, industrial property, rules of navigation, the control of narcotic drugs, fisheries, and submarine cables.

2. The United States has participated actively in conferences dealing with the broader subjects of world relationships, *e.g.*, the Berlin Conference of 1884-5 (but did not subsequently ratify the convention); both of the Hague Conferences;¹¹ the Algeceiras Conference (1906). The

¹¹ Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907*, Edited by James Brown Scott, Director, New York, Oxford University Press.

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United States took the initiative in calling the Conference on the Limitation of Armaments (1921-2), and in the Four-Power Treaty agreed to the general principle of conference.¹² It also took the initiative in calling a conference of the Central American States (1922-3).

3. *International Conferences of American States* (Pan-American Conferences), in which the United States has been an active participant, have been effective agents of international coöperation among the nations of the Americas. They have tended to create and conserve the will to peace. These conferences meet periodically. Being a law unto themselves each conference determines the place and suggests the time of meeting for the subsequent conference.¹³

b. Added testimony to the value of conferences is found in the conferences of the British Empire, which have been held periodically since 1887. These conferences, now an institution, have provided for periodic meetings.¹⁴ To them the nations which make up the British Empire (they are, in fact, autonomous states) send delegates, usually their premiers. The British Empire is a vast example of successful international government based on conferences. More varied interests, both racial and economic, would be difficult to find than those of Great Britain, India, New Zealand, South Africa, Canada, and Australia. And the

¹² See Note 7 on p. 550.

¹³ The Fifth International Conference of American States, which met at Santiago, Chile, adopted on May 1, 1923, the following resolutions:

1. To designate as the place of meeting of the Sixth International Conference of American States, the city of Havana, capital of the Republic of Cuba.

2. To recommend to the Government of Cuba and to the Governing Board of the Pan-American Union, that the next Conference assemble as soon as possible, and, in any case, within a period of five years following the close of the present Conference.

¹⁴ See page 194 *et seq.*

flexible method of conference has enabled the Empire to work out in coöperation its common purpose.

c. A few examples will illustrate how the principle of conference may be applied in the foreign policy of the United States. From the very nature of the case, little can be said concerning emergency conferences, but the agenda of periodic or constructive conferences can be illustrated. It is in preparing and considering these that the Peace Council could do most effective work.

1. President Harding, in his address on April 24, 1923, advocated "voluntary conference of nations out of which could be expected a clarified and codified international law to further assure peace under the law, and bring nations that understanding which is ever the first and best guarantor of peace." A conference should be called to reduce to official form the rules of law (both treaty law and common international law) which are now accepted by civilized nations.

2. *An international conference on commercial policy* is desirable and items such as the following should appear on its agenda:

The form, scope, and interpretation of the most-favored-nation clause in commercial treaties.

Unfair methods of competition¹⁵ and combination in international trade.

Equal opportunity of access¹⁶ to the raw materials and fuels of the world, particularly those found in colonial and other undeveloped areas.

Equal opportunity of access to markets, frequently defeated by tariff discriminations, and other forms of preference and trade monopoly.

Equal opportunity for the investment of capital in the development of economically backward parts of the world.

¹⁵ See Chap. xi.

¹⁶ See Chap. ix.

These agenda would raise for discussion the fundamental economic conflicts between states which contribute to modern war. An agreement concerning the most-favored-nation clause and the principle of the open door would tend toward the establishment of commercial equality of treatment which must be the basis of harmonious international relations.

These agenda would also lead to a further amplification and definition¹⁷ of the principle of the open door as it applies both to inbound and outbound trade. It would provide rules for the exploitation of the essential raw materials of the earth, for the prevention of monopolistic control of these raw materials by governments or by national groups supported by governments, and it would contribute to the regulation of concessions and financial operations in the economically less-advanced parts of the world.

At such a conference, it should be frankly recognized that national governments in some cases operate through private companies, and private companies at times operate through governments. In other words, government is at times thrown into the scale in favor of commercial and financial enterprise and commercial and financial enterprise is used to further political aims.

3. Following, or perhaps as part of, a conference on commercial policy, there should be held *a world conference on the conservation of natural resources*. Instructions to invite the nations to such a conference were issued to American diplomatic officers abroad during the Roosevelt Administration,¹⁸ but the conference was not held.

4. A subject of large international importance which should be considered in a world conference is *electrical*

¹⁷ See *Proceedings of Mining and Metallurgical Society*, November 15, 1921, Bulletin 151.

¹⁸ See page 336.

communications. In Paris in 1919, the five Allied and Associated Powers agreed to call "An International Congress to consider all international aspects of communications by land telegraphs, cables, or wireless telegraphy" with the view to providing "the entire world with adequate facilities of this nature on a fair and equitable basis." A preliminary International Communications Conference was held in Washington in 1920. It was preparatory to a world conference which will consider the adoption of rules for the regulation of this important international activity. The proposal has been made that an International Electrical Communications Union be established, analogous to the Postal Union.¹⁹

d. General observations on conferences:

1. The objection may be urged that conferences are difficult to convene and that as a result they are usually not called until a serious crisis has arisen, at which time it is too late to do anything constructive. But The Hague Conferences of 1899 and 1907, and the Arms Conference of 1921 are notable examples of nations in time of peace legislating for the purpose of maintaining peace. The objection that nations are reluctant to confer is more apparent than real. The difficulty is not with conference but with conference *on vital issues*. The reluctance will not be overcome by the wholesale adoption of machinery which in time of need is not used. The Genoa Conference was outside the League of Nations and the Italian-Greek affair was not settled by resort to the League's machinery. To convene a conference is no more difficult than to bring before a permanent international organization a *vital* issue for effective decision. Furthermore, if the principle of conference is established as a part of the general policy of the United States, as it could be by an act of Congress,

¹⁹ Baker, Ray Stannard, *Woodrow Wilson and World Settlement*, Vol. 2, p. 485.

the tendency will be to resort to it more and more in the discussion of vital international issues.

2. A contrary fear is that if the principle of conference is recognized formally, our government will rush too rapidly into international participation. But a President and his Secretary of State will not proceed with a conference until conversations with other governments and the advice of the Peace Council give some promise of success both in negotiation and in ratification.

3. A third objection that may be made is that occasional conferences do not meet the needs of world government, since the processes of all government are continuous. But even in domestic government *legislation* is not continuous. In international affairs, conferences, like legislative bodies in domestic affairs, can legislate from time to time as the need may arise. On the other hand, administration and adjudication are the continuous processes of government. In the plan of international government which is here submitted, these processes *are continuous*.

4. Delegates to conferences appointed *at the time when the need arises* are likely to be both representative of their governments and qualified to handle the particular problems specified on the conference agenda. That they be representative is essential in connection with effectuating subsequent ratification. That they be qualified is necessary when the complex technical character of international subjects is considered.

5. The advantage of international conferences may be merely that which results from nations assembling for a frank discussion of their common problems, or they may result in multilateral treaties. General conferences discourage mere bargaining in which the stronger state gets the concessions it can demand and they encourage the determination of issues on their merits. The Berlin Conference, the Algeciras Conference, and the Limitation

of Armaments Conference indicate that conference by many nations tends to eliminate the selfish interests of a few powers in favor of the general world interest.

INTERNATIONAL BUREAUS, COUNCILS OR COMMISSIONS

a. Substantive law is not sufficient. Effective methods of administration must be devised. Even when rules or principles have been agreed upon by nations, extreme views of national sovereignty have often prevented the setting up of international machinery for their effective administration. This clear necessity should also be faced in future world conferences.

1. The nature of this particular problem is obvious to us in America from our experience with the regulation of commerce between states through Federal agencies. The powers of the Interstate Commerce Commission, for example, grew slowly, but, once developed, their exercise has settled disputes between states which, if they had arisen between nations under the present anarchistic conditions of international relations, might have led to war.

2. When the Nine-Power Treaty was under consideration by the Arms Conference, the necessity for administration was recognized. This treaty not only laid down a definite principle concerning the open door, but it provided that China should "not exercise or permit unfair discrimination of any kind" on her railways. The conference then, desiring "to provide a procedure" for dealing with these questions, resolved "to establish in China a Board of Reference to which any questions arising in connection with the execution of the aforesaid Articles may be referred for investigation and report."²⁰

²⁰ See *Report of the Conference on the Limitation of Armament*, Washington, Nov. 12, 1921-Feb. 6, 1922.

3. In the Americas the Pan-American Union ²¹ and the International Joint Commission ²² are examples of international coöperation.

4. An effort to deal internationally with bounties and consequent dumping—an unfair method of foreign trade competition—was made in the Brussels Sugar Convention of 1902 to which the leading European countries were signatories. The parties agreed to suppress their bounties, direct or indirect, on the production or exportation of sugar, and to penalize similar bounties, where levied, by the imposition of countervailing duties equal to the bounties. A commission with administrative functions was created to make effective the provisions of the convention.

5. Effective administrative work is being done by the League of Nations through its various commissions and bureaus. There are, for instance, the purely administrative organizations for the Saar and for Danzig. But perhaps more important in the development of effective international government are such non-political agencies as the Financial and Economic Commission, the Advisory Organization on Transit and Communication, the International Labor Office, and the Mandates Commission.²³

b. These precedents suggest lines of further development which may be considered by the Peace Council to determine how far they are consistent with American interests and world peace.

1. The first obviously desirable function of international

²¹ The Governing Board of the Pan-American Union consists of the Secretary of State of the United States, Chairman *ex officio*, and the diplomatic representatives in Washington of each of the other states of the Americas.

²² See *United States Treaties*, Vol. III, p. 2607, Convention Concerning Boundary Waters between the United States and Canada, signed 11 January, 1909.

²³ See page 294.

commissions or bureaus is investigation. The various subjects of international coöperation considered by conference will require investigation both before and after conference action. Commissions might be established to furnish information on foreign investments in economically backward countries, on unfair methods of international competition and monopoly and on electrical communication between nations.

An international commission, established, under a treaty defining its powers, to deal with disputes over raw materials and fuels, could assist in maintaining equal opportunity to all nations in the exploitation of resources in the economically less-advanced parts of the world (*e.g.*, oil), in the adjustment of disputes over price in cases where the control of a raw material is virtually monopolistic (*e.g.*, rubber and nitrates), and in the conservation of natural resources in which civilization has a vital interest (*e.g.*, manganese and tungsten).

2. The development of international regulation must necessarily be gradual. Commissions might be given semi-judicial or administrative powers to deal with subjects with which, as experience has shown, the legal machinery of a court can not successfully deal. For example, it has been found in the United States that unfair methods of competition as offenses against the public can be more successfully prevented by the Federal Trade Commission than by the Federal Courts.

3. Publicity will usually be sufficient to enforce the decisions of commissions. The International Chamber of Commerce, for example, relies chiefly on opinion in the business community for the enforcement, between citizens of different nations, of its awards under its admirable rules for the arbitration of commercial disputes.²⁴ The Man-

²⁴ International Chamber of Commerce: *Rules of Conciliation (Good Offices) and Arbitration*, Oct. 21, 1922, *Brochure No. 21*.

dates Commission of the League of Nations has found publicity a powerful force in getting its suggestions carried out. If, however, it seems desirable to go further, it might be provided that the commissions' decisions be enforced through some national body in the country of which the offending party is a resident; for example, a decision against an American corporation guilty of unfair competition in international trade might be enforced through the Federal Trade Commission.

4. If the decisions of a commission involve political issues of importance, their enforcement should be suspended and they should be referred for disposition to the next conference of the powers, which alone would have power to dispose of international *political* questions.

THE WORLD COURT

a. Finally, in addition to provisions for legislation (by conference and ratification) and administration through commissions of international law, there should be provisions for the interpretation and construction of the law. In this department of coöperation the American precedents are conclusive and need not be enumerated.²⁵ From the beginning of American history our Government has advocated and practiced the judicial settlement of disputes.²⁶ Most of the nations to-day, except the United States, have adhered to the World Court protocol, and the United States should, in the near future, logically accept this obligation.²⁷

²⁵ Moore, J. B., *History and Digest of International Arbitrations*.

²⁶ Moore, J. B., Professor of International Law at Columbia University, and a Judge of the Permanent Court of International Justice, says: "... arbitration is and always has been considered in international law as a judicial process." (*International Conciliation*, No. 186 [May, 1923] 380).

²⁷ For advisory opinions and judgments of the Court see *Collections of Advisory Opinions and Collection of Judgments of the Permanent Court of International Justice*.

b. The United States should not join the World Court without determining to coöperate with other nations through conferences in the making of new international law. A court must take only recognized principles of international law and treaty provisions (*e.g.*, most-favored-nation principle) and upon them extend the rule of law.

CONCLUSION

The suggestions which have been made concerning international coöperation are in line with the best American tradition. They have in almost all cases been illustrated from American precedents. If carried out, they would tend to remove the causes of war. Until these or similar steps are taken toward effective international coöperation, it will be necessary for nations to maintain their military organizations. Armaments are bases of security until something more effective is established. The choice before the world is between force and justice established by law. The more effective the international machinery of justice becomes, the less belief will there be in dependence upon force. The more coöperation is practiced, the less will force be resorted to. But until the nations coöperate to build up and perfect international government, they will seek their security through armies and navies. Nations still, unfortunately, understand best the language of power. Armaments are inseparable from the policies which they support. Nations will not give up their armies and their navies until they are given security in some other form of guaranty. War and preparation for war are inevitable products of causes operating in an unregulated, anarchistic world.

The choice between force and international coöperation, however, is more apparent than real. Nowhere does nationalism break down more disastrously than in its use

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of force. War and armaments do not provide security. Modern war is about to destroy the agency which it seeks to preserve, namely, the nation. Those who make war must look well ahead and consider the ultimate consequences of the results that follow upon war, the destruction of capital, the draining of funds from the country, the dislocation of the delicate credit machinery of the modern world, the depreciation of currency, the disorganization of markets, the destruction of purchasing power, and the lowering of the morale of whole peoples.

The plan here submitted recognizes that in international, perhaps even more than in domestic, matters our social and political organization has not kept pace with our technical development. We are suffering to-day from a too rapid advance in science and in commercial and industrial organization without a corresponding advance in social and governmental organization, and if the organization of the world's common life is to catch up and if we are to be secure and prosperous, the United States must do its share to achieve and preserve world peace.





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